

1 A F T E R N O O N S E S S I O N

2 THE CLERK: Come to order, please. This is
3 case on trial continues.

4 All parties are present. Jurors are not
5 present at this time.

6 Are the People ready?

7 MR. BIANCAVILLA: Ready.

8 THE CLERK: The defendant ready?

9 MR. CHAMBERLAIN: Ready.

10 THE CLERK: Ready for the jurors.

11 THE COURT: Yes.

12 THE CLERK: Jury entering.

13 THE COURT OFFICER: Jury entering.

14 (Whereupon, the sworn jury and alternates
15 enter the courtroom)

16 THE CLERK: Both sides stipulate that all
17 sworn jurors are present and seated properly?

18 MR. BIANCAVILLA: Yes.

19 MR. CHAMBERLAIN: So stipulated.

20 THE COURT: Ask the Detective back in please.

21 V I T O S H I R A L D I, Detective, recalled as a
22 witness, having been previously duly sworn, resumed
23 the stand to continue testimony as follows:

24 THE CLERK: Detective Shiraldi, you're
25 reminded you're actually under oath.

1 Be seated.

2 THE COURT: Good afternoon, ladies and
3 gentlemen. We're ready to continue with the trial.

4 Mr. Chamberlain.

5 MR. CHAMBERLAIN: Thank you, Judge.

6 CROSS-EXAMINATION CONTINUED

7 BY MR. CHAMBERLAIN:

8 Q Detective, I'm going to show you a document and
9 ask if you can identify it.

10 MR. CHAMBERLAIN: Can I have it marked for
11 identification?

12 THE COURT: Defendants H.

13 (Whereupon, the referred to item is received
14 and marked Defendant's Exhibit H for identification by
15 the reporter as instructed.)

16 THE COURT OFFICER: Defendant's H for
17 identification so marked.

18 THE COURT: Would you like it shown to the
19 witness.

20 MR. CHAMBERLAIN: Yes, please, Judge.

21 Q Detective, is that a record kept in the regular
22 course of business of Nassau County Police Department?

23 A Yes.

24 Q And is it the regular course of business of the
25 Nassau County Police Department to keep such records?

1 A Yes.

2 Q And is that report made at or about the time or
3 within a reasonable time thereafter of events related
4 thereon?

5 A I didn't make this document.

6 Q Can you tell looking at that whether or not that
7 was made at or about the time?

8 A It says 4/14 2000. I'm assuming that's the date.

9 THE COURT: You can't assume.

10 A That is the date on there. I didn't make this
11 document.

12 Q I understand that. We're certainly referring to
13 SIB for evaluation or analysis?

14 MR. BIANCAVILLA: Judge, I'm going to object.
15 He's going to be reading from something not in
16 evidence.

17 MR. CHAMBERLAIN: I'm not asking him to read.
18 I'm asking if -- read it to himself.

19 THE COURT: He certainly can look at the
20 document. He can't read out loud.

21 I will allow it.

22 MR. CHAMBERLAIN: That's fine.

23 A There is one item that says, go to SIB.

24 MR. BIANCAVILLA: Objection.

25 THE COURT: Detective, don't tell us what it

1 says.

2 THE WITNESS: Okay.

3 A Yes.

4 Q Were, to your knowledge, a Ziplock bag taken from
5 the deceased's car with buds and stems submitted to SIB for
6 analysis?

7 MR. BIANCAVILLA: Objection.

8 THE COURT: Sustained.

9 MR. CHAMBERLAIN: I'm asking if he knows
10 whether that was done, Judge.

11 THE COURT: Well, you -- the question you
12 asked is not a proper question. Perhaps, if you leave
13 out half the question, you will be able to ask the
14 question.

15 Q Was a Ziplock bag with stems and buds submitted
16 to SIB for analysis in connection with this case?

17 A I don't know.

18 Q You don't know?

19 A I have no knowledge of that.

20 Q Would you review the document again, Detective,
21 and see if the internal information confirms that the
22 document was submitted at or about the time it relates as to
23 crime scene evidence submitted to the crime -- by crime
24 scene to SIB.

25 MR. BIANCAVILLA: Objection, Judge.

1 THE COURT: Sustained.

2 MR. CHAMBERLAIN: I'm going to ask that two
3 other documents be marked for identification.

4 THE COURT: Defendant's I.

5 (Whereupon, the referred to item is received
6 and marked Defendant's Exhibit I for identification by
7 the reporter as directed.)

8 THE COURT OFFICER: Defendants I for
9 identification.

10 Show it to the witness? Would you like it
11 shown to the witness?

12 MR. CHAMBERLAIN: Defendant's I for
13 identification is a document, two pages?

14 THE COURT OFFICER: Yes.

15 MR. CHAMBERLAIN: Would you show it to the
16 witness.

17 Q Are those documents, records, kept in the regular
18 course of business of Nassau County Police Department?

19 A Yes.

20 Q And is it the in the regular course of business
21 of the police department to keep such documents --

22 A Yes.

23 Q Make such record? Were they made at or about the
24 same time as the events related therein?

25 A One was made on April 20th.

1 MR. BIANCAVILLA: Objection, not responsive.

2 THE COURT: No. Sustained.

3 You can't read from the document, Detective.

4 THE WITNESS: I can't answer it.

5 Q The documents relate to certain information.

6 Were the documents made at or about the same time or

7 reasonably close thereto?

8 A To what?

9 Q To the events related in the documents?

10 A One of the pages is my notes and one --

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Don't tell us what it says.

13 THE WITNESS: No.

14 Q Your notes -- withdrawn.

15 Page one --

16 MR. BIANCAVILLA: Judge, I'm going to object.

17 Can we approach, please?

18 THE COURT: Come forward, Counsel.

19 Step down.

20 (Whereupon, the following takes place at the
21 Bench, between the Court and Counsel:)

22 MR. BIANCAVILLA: My objection is, Judge,

23 this is not a business record, nor is this a business

24 record. This is nothing more than hearsay. The

25 detective is on the stand testifying. If he testifies

1 something inconsistent, he can be impeached with this,
2 and only if he denies --

3 THE COURT: These are the detective's notes.

4 MR. BIANCAVILLA: I understand that.

5 THE COURT: I think we're on the same page on
6 that. It's not a record, I agree with you.

7 MR. BIANCAVILLA: It's not a record.

8 Moreover, this, even though it appears to be some type
9 of a report, is not a business record either. Because
10 the detective has testified to that. If there is
11 something in there that is different from what he is
12 testifying, then he can be impeached with that. But
13 that is not a business record.

14 THE COURT: Mr. Chamberlain.

15 MR. CHAMBERLAIN: Yes. The -- this is a
16 business record, certainly. It's a report made in the
17 regular course of business of the Nassau County Police
18 Department. And regardless of what the district
19 attorney says, the witness has so identified it as a
20 business record. He's identified both of them as
21 business records kept in the regular course. It's the
22 regular business of the Nassau County Police Department
23 to keep such records. Previously he testified that as
24 part of the scientific procedure and protocol they make
25 records immediately of whatever they're examining.

1 THE COURT: So far you are having difficulty
2 getting this into evidence. I'm not disagreeing with
3 you, this is a business record. This may have well
4 been a business record. To me it is a document filled
5 out by the Scientific Investigation Bureau of the
6 Police Department. It says on top, Police Department,
7 County of Nassau, New York, Scientific Investigation
8 Bureau Receipt/Report.

9 MR. BIANCAVILLA: My point, just because it
10 says it is a report, Judge, does that mean it is a
11 business record? Here's my point, Detective Shiraldi
12 testified as to his conclusions. If there is nothing
13 in there that is inconsistent with his conclusions and
14 that he has denied, then it is not admissible.
15 Otherwise --

16 THE COURT: That is a different story,
17 Mr. Biancavilla.

18 MR. BIANCAVILLA: Otherwise, I can come up
19 here with every single report and offer it into
20 evidence as a business record.

21 THE COURT: I'm not disagreeing with you. I
22 haven't read what is in the document.

23 MR. BIANCAVILLA: All right.

24 THE COURT: Okay. The question is, one, is
25 it a business record? I'm looking at the two

1 documents. Detectives notes is not a business record.

2 Is this is a business record, on two? It is
3 inconsistent with the way the detective testifies.

4 At this point you have, Mr. Chamberlain, you
5 have to then question with respect to this report. And
6 if there is an inconsistency as a business record, I
7 will permit it into evidence. But so far you haven't
8 met that test.

9 MR. CHAMBERLAIN: Well, I didn't understand
10 the objection. I thought the objection was based upon
11 the fact that the witness wasn't sure of the thrust of
12 the question.

13 MR. BIANCAVILLA: No.

14 THE COURT: Mr. Chamberlain, you may be
15 right. I don't think he understood your question with
16 respect to being made contemporaneously with the events
17 thereof. But you can clarify that.

18 MR. CHAMBERLAIN: I think I'm entitled to --

19 THE COURT: This is notes. This is not a
20 business record.

21 MR. CHAMBERLAIN: He's indicated as part of
22 the standard procedure in the scientific investigation
23 bureau, they make notations right away of exactly what
24 their findings are. The language in here is language.
25 He hasn't fully testified.

1 THE COURT: Even if I agree with you that
2 it's a business record, which I don't, even if he
3 agrees with you, it has to be inconsistent with the
4 manner in which the detective has testified. If it's
5 inconsistent, then you can get it into evidence first
6 by questioning him and then, obviously, it will be an
7 exhibit that you can show. Then I would permit it into
8 evidence and the jury will be able to see it, it was
9 inconsistent.

10 MR. CHAMBERLAIN: This page, Judge.

11 THE COURT: You still have to do the same
12 thing. You still have to show it's inconsistent. Just
13 because it's consistent -- I don't know, question him,
14 we'll find out if it's inconsistent or not. As I said
15 before, I haven't read the document.

16 MR. CHAMBERLAIN: It's a matter of
17 phraseology. The only way I can do it is to refer to
18 the phraseology.

19 THE COURT: Why don't you ask him the
20 question, if he made a finding on such and such a date.
21 If it's inconsistent -- you have to phrase the
22 questions. You know, I only make rulings on the
23 evidence.

24 MR. CHAMBERLAIN: If this is a record, a
25 business record, I think I should be allowed to get it

1 in.

2 THE COURT: It is a business record. But
3 there's another ground for the objection, which I agree
4 with the assistant district attorney. In order to get
5 the document into evidence, you first have to show it's
6 inconsistent with how he testified.

7 MR. CHAMBERLAIN: All right, Judge.

8 (Whereupon, the following takes place in open
9 court:)

10 CROSS-EXAMINATION CONTINUED

11 BY MR. CHAMBERLAIN

12 Q On April 20th OF 2000 you made a microscopic
13 examination of the ligature that had been submitted to SIB,
14 is that right?

15 A That's correct.

16 Q And did you on that indicate a particular type of
17 ligature as a result of your examination?

18 A I just called it a ligature. I didn't specify
19 any type.

20 Q Did you specify any uniqueness about the
21 ligature?

22 THE WITNESS: May I refer to my notes, Judge?

23 THE COURT: Yes, you may refresh your
24 recollection.

25 A I call it a black wire -- black power type wire.

1 Q Did you not say ligature, unique?

2 A I write that in my notes. Yes, I do.

3 Q Did you not say that power adapter, but the other
4 end was cut with a sharp implement not --

5 MR. BIANCAVILLA: I object. He's not reading
6 from -- he's reading from something not in evidence.

7 THE COURT: Mr. Chamberlain, please don't
8 read from the document.

9 Q Would you please characterize the exact language
10 you used? Withdrawn.

11 Detective, you indicated in the beginning of
12 cross that for scientific review of your examinations it's
13 important for you to immediately record your findings, is
14 that correct?

15 A Yes.

16 Q And what did you record after examining that
17 ligature with the microscope?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: You're asking him to read from
20 the document, Mr. Chamberlain.

21 MR. CHAMBERLAIN: I'm asking him to review
22 his notes, not read from the document.

23 THE COURT: That's different.

24 Q Would you review your notes and give me --

25 THE COURT: No. He doesn't say he needs his

1 memory refreshed. You have to just ask him the
2 question. And then if he needs his memory refreshed,
3 he will say so and I'll direct -- give him permission
4 to look at his notes.

5 Q Would you do that?

6 A Look at my notes?

7 THE COURT: Mr. Chamberlain, ask a question.

8 Q Would you review your notes and give me your best
9 recollection after so doing of your findings as to the other
10 end of the -- what cut the other end of the cord?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Sustained.

13 Q Did you indicate here, Detective, that --
14 withdrawn.

15 After examining that cord with a microscope, did
16 you not only find that it was cut with one directional
17 force, but that it was a sharp implement?

18 A Yes.

19 Q Not like wire cutter, but something like a knife?

20 A I don't say like a knife. I say one directional
21 force, different than wire cutters.

22 Q It's different. Would that be the knife that you
23 displayed in front of this jury?

24 A No. I think I displayed that it was not a knife.

25 Q Well, wouldn't a one directional force be a cut

1 made with a knife?

2 A One directional force could be cut with a knife,
3 yes.

4 Q Now, you indicated that you made a -- withdrawn.

5 After you sent that -- you did not, did you, make
6 an evaluation of the little black dot that was found on the
7 tool before it was sent to the FBI?

8 A No, I did not.

9 Q And did you request that that evaluation be made
10 by the FBI?

11 A Yes.

12 Q And at the time that that request was sent out,
13 you were in charge of the tool mark section of SIB, were you
14 not?

15 A No, I was not.

16 Q Who was in charge?

17 A Detective-Sergeant Ryan.

18 Q Was Detective Ryan's expertise in tool markings
19 or in handwriting?

20 MR. BIANCAVILLA: Objection. What's the
21 relevancy of that?

22 THE COURT: There doesn't appear to be any
23 relevancy.

24 I'll permit him to answer it. If he knows.

25 A He's my immediate supervisor. He's not a

1 scientific -- you know, he's not a criminalist.

2 Q He's not a criminalist. Does that mean he does
3 not examine tools microscopically, the way you do?

4 MR. BIANCAVILLA: I object.

5 Q What does that mean, he's not a criminalist?

6 THE COURT: Sustained.

7 Q Would you explain to the jury what type of --
8 withdrawn.

9 Was there anybody else in SIB that was doing tool
10 examinations at that time?

11 MR. BIANCAVILLA: Objection, as to relevancy.

12 THE COURT: Mr. Chamberlain, I don't see the
13 relevancy to that question. Perhaps you can tell me.

14 MR. CHAMBERLAIN: Let me go on, Judge.

15 Q You showed this jury a number of different types
16 of tools; was one of those the scissors?

17 A No.

18 Q You cut one of the packages that the cord was in
19 with a pair of scissors, did you not?

20 A That's correct.

21 Q You didn't make any use of that scissor in your
22 demonstration, right?

23 A That's correct.

24 Q And a scissor is a sheering-type tool, right?

25 A That's correct.

1 Q Not the type tool that would result in a one
2 directional force cut, right?

3 A That's incorrect.

4 Q Scissors come in different shapes, some blunter,
5 some wider than others, right?

6 A That's correct.

7 Q And some looser than others. Did you make any
8 tests of this cord with a scissor?

9 A No.

10 Q Now, the cord which was used here was examined by
11 you on April 20th?

12 A Yes.

13 Q And the -- I think it's your testimony that you
14 made no examination of the cord or a tool until after it was
15 received back from the FBI?

16 A That's incorrect.

17 Q I see. What is correct then?

18 A I examined the cord on April 20th. I
19 photographed --

20 MR. BIANCAVILLA: I'm sorry, I can't hear the
21 Detective. Would you speak up.

22 A I examined the cord on April 20th. I
23 photographed the cord on April 20th. I never examined the
24 leatherman tool until November 8th of 2000.

25 Q You have already testified that you sent the tool

1 along with the cord to the FBI to have a little dot on the
2 tool examined by the FBI.

3 A That's correct.

4 Q So, you saw the tool and you must have examined
5 it sufficiently to know there was a little black dot on it,
6 right?

7 MR. BIANCAVILLA: Objection. That wasn't his
8 testimony.

9 MR. CHAMBERLAIN: That was --

10 THE COURT: I'll sustain it as to form.

11 Q You examined the tool to determine whether there
12 was any material on it?

13 A No, I did not.

14 Q Detective, the transmittal to the FBI was when,
15 do your notes indicate that?

16 A When was it sent or was it? When was the letter
17 written?

18 Q Pardon me.

19 A When was the actual item sent?

20 Q When was it sent?

21 THE WITNESS: Can I refer to my notes, Judge?

22 THE COURT: Of course. If your notes will
23 refresh your recollection.

24 THE WITNESS: Yes, they will.

25 A On 6/29 2000.

1 Q I'm going to show you Defendant's G for
2 identification again and ask you if you were aware of that
3 document at the end of May 2000?

4 A Yes, I was.

5 Q And can you explain any reason -- withdrawn.

6 The tool was sent to Washington, the tool and the
7 cord were sent to Washington, because you were busy with
8 other matters?

9 A That's correct.

10 Q And this was at the direction of the Homicide
11 Detective, John -- Jack McHugh?

12 A Yes.

13 Q And presumably he wanted this thing done quickly,
14 right?

15 MR. BIANCAVILLA: Objection.

16 THE COURT: Sustained.

17 Q Was there any reason why it couldn't wait?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: Sustained.

20 Q The letter indicates --

21 MR. BIANCAVILLA: Objection.

22 Q Withdrawn.

23 THE COURT: Sustained.

24 Q Do you have any reason for the delay between that
25 document dated --

1 MR. BIANCAVILLA: Objection.

2 Q The end of May?

3 MR. BIANCAVILLA: Reading from something not
4 in evidence.

5 THE COURT: Yes, sustained.

6 Mr. Chamberlain.

7 Q Detective, do you have any notes regarding
8 your -- your notes regarding any examination of the cord or
9 the tool, other than the pages that I have already exhibited
10 to you?

11 A No.

12 Q Do you have any notes concerning the tool being
13 worn?

14 A No.

15 Q Do you have any notes concerning the tool having
16 play in it?

17 A No.

18 Q Do you have any notes concerning the tool being
19 difficult to cut?

20 A No.

21 Q Being dull or requiring strength to cut the cord?

22 A No, I do not.

23 Q Do you have any notes indicating that the tool
24 will leave a cut with a flat end with a small tail?

25 A No.

1 MR. BIANCAVILLA: Objection.

2 THE COURT: I'll permit it.

3 Q And until you received the tool and the cord back
4 in late October of 2000, you had no communications with the
5 FBI concerning their evaluation of the cord?

6 A Prior to November 8th?

7 Q Received it back November 8th?

8 A That's correct.

9 Q Prior to November 8th, 2000?

10 A No, I did not.

11 Q Was there anybody else in SIB who was working on
12 this case and this evaluation of that tool or that cord
13 besides yourself? Anybody else at SIB besides yourself
14 working on that cord and that tool?

15 A No.

16 Q After you received the cord back November 8th,
17 did you make any further examination of that cord or that
18 tool in connection with your testimony here today?

19 A The cord, yes. The tool, no.

20 Q The cord, when?

21 A When I sampled a small, thin piece, as I
22 described, in the Fourier transformation infrared
23 spectroscopy. So, sample that in comparison to the small
24 black fleck of plastic that was removed by the FBI and put
25 in the sample container.

1 Q That was a stereo microscopical examination of
2 the material, the cord and the little black dot taken from
3 the tool?

4 A Ever forensic examination should start, and it
5 started, with a stereo microscopic examination.

6 Q And would you tell the jury exactly what you did
7 with that?

8 A I examined that under a stereo light microscope.

9 Q Anything else?

10 A Then I did Fourier transformation infrared
11 spectroscopy on both samples.

12 Q Did you use any other material in that fashion?

13 A Other than the two samples, the small black flex
14 and the wire?

15 Q No.

16 A No.

17 Q May I see you document -- withdrawn.

18 Was that on or about November 14th of 2000?

19 THE COURT OFFICER: Defendant's I for
20 identification.

21 (Whereupon, the referred to item is handed to
22 the witness)

23 A I finished my report on 11/14 2000, yes.

24 Q Was that report kept in the regular -- made in
25 the regular course of business of Nassau County Police

1 Department?

2 A Yes.

3 Q Was it the regular course of business of the
4 Nassau County Police Department to make such records?

5 A I write a report when I finish a case.

6 Q Was that report made at or about the time the
7 examination referred to therein?

8 A Yes.

9 MR. CHAMBERLAIN: I offer that in evidence.

10 MR. BIANCAVILLA: Same objection as before,
11 Judge.

12 MR. CHAMBERLAIN: It has --

13 THE COURT: Counsel, come forward.

14 (Whereupon, the following takes place at the
15 Bench, between the Court and Counsel:)

16 THE COURT: Mr. Chamberlain, where was it
17 contradictory, the testimony, to what Detective
18 Shiraldi said on direct.

19 MR. CHAMBERLAIN: Right here it starts,
20 Judge. He used a piece of wood in connection with that
21 examination.

22 MR. BIANCAVILLA: He didn't ask him about it.

23 THE COURT: That was my next --

24 MR. BIANCAVILLA: Thank you.

25 THE COURT: You didn't ask him that.

1 MR. CHAMBERLAIN: I asked --

2 THE COURT: Let me explain, Mr. Chamberlain.
3 Mr. Chamberlain. Mr. Chamberlain, in a criminal
4 case -- and I shouldn't have to be doing this.

5 MR. CHAMBERLAIN: I would like --

6 THE COURT: You -- he has his direct
7 testimony. He gives his testimony. You listen to it.
8 Then you look at the record and see if there's
9 something contradictory there. Then you cross him,
10 didn't you do X or didn't you do Y or didn't you do Z?
11 And then now, there is where the contradiction is, he
12 says, I did J or K or L.

13 MR. CHAMBERLAIN: I asked him if he used any
14 other material.

15 MR. BIANCAVILLA: You had better go back to
16 law school.

17 MR. CHAMBERLAIN: He used any other material
18 back in connection with that. That was the question I
19 asked him.

20 THE COURT: Why didn't you ask him if he used
21 a piece of wood?

22 MR. CHAMBERLAIN: You know, Judge --

23 THE COURT: Mr. Chamberlain, we follow the
24 rules of evidence.

25 MR. CHAMBERLAIN: I am following the rules.

1 THE COURT: No, you're not.

2 MR. BIANCAVILLA: No, you're not, John.

3 MR. CHAMBERLAIN: I respectfully except. I
4 would like --

5 THE COURT: You have an exception on the
6 record.

7 MR. CHAMBERLAIN: All of this is in front of
8 the jury and this witness.

9 THE COURT: Nobody -- if you don't raise your
10 voice, nobody is hearing this. And you haven't, yet.
11 That's why we're up at the Bench. I won't do it in
12 front of the jury.

13 I'm trying to explain to you, if you want to
14 try to get a contradiction in, you have to ask him
15 about the contradiction. Didn't you say in your report
16 that you used wood? There's -- it has to be a direct
17 contradiction in order to get it into evidence. Then,
18 that part, well, we redacted that part of it, will get
19 into evidence.

20 MR. BIANCAVILLA: He has to deny it first
21 before you can put that into evidence.

22 THE COURT: You have to ask him the question.

23 MR. CHAMBERLAIN: I did ask him a question.

24 MR. BIANCAVILLA: No, he didn't.

25 THE COURT: You didn't ask you him about the

1 wood.

2 MR. CHAMBERLAIN: I asked him if he used any
3 other substance. I mean, that would include anything.
4 I said, was anything, other than those two items --

5 MR. BIANCAVILLA: You give it to him and say,
6 does this refresh your recollection as to some other
7 substance. And if denies it --

8 MR. CHAMBERLAIN: He had it in front of him
9 to refresh his recollection.

10 THE COURT: Mr. Chamberlain, there are
11 certain procedures. Now, I don't want do keep doing
12 this at the Bench. You have to follow the rules of
13 evidence. You have to ask a correct question, a proper
14 question.

15 MR. CHAMBERLAIN: Fine, Judge. You're not
16 allowing this in?

17 THE COURT: I'm sorry?

18 MR. CHAMBERLAIN: It's not allowed in?

19 THE COURT: You haven't done it properly.

20 MR. CHAMBERLAIN: It's not allowed, Judge?

21 MR. BIANCAVILLA: Judge, can we move on. I
22 have another witness.

23 THE COURT: You have an objection?

24 MR. BIANCAVILLA: Yeah, I have an objection.

25 THE COURT: Sustained.

1 MR. CHAMBERLAIN: Okay.

2 (Whereupon, the following takes place in open
3 court:)

4 Q Detective, in connection with that evaluation of
5 that material, you indicated you didn't use any other
6 substance. Does a piece of toothpick-like wood used in
7 connection with that evaluation refresh your recollection?

8 A I know it's there. I didn't use that in my
9 evaluation, no.

10 Q You indicated it was stereo microscopical. Was
11 there not a chemical method used in that evaluation as well?

12 A The Fourier transformation infrared spectroscopy
13 is an instrument, technique, that uses the infrared energy
14 to pass through the sample, samples, dictates the absorbancy
15 of that and gives you a spectrum, as I indicated before.

16 Q Those tests indicated that the material was not
17 only dissimilar, but, quote, could not have originated from
18 the cord?

19 A That's correct.

20 Q Other than that test, did you perform any other
21 tests on either the cord or the tool before testifying here
22 today?

23 A No, I did not.

24 Q After you got the FBI report that indicated a
25 different type of cut --

1 MR. BIANCAVILLA: Objection, Judge.

2 THE COURT: Sustained.

3 Q Did the FBI report come back with a different
4 type of cut?

5 MR. BIANCAVILLA: Objection.

6 THE COURT: Sustained.

7 THE COURT: It's not in evidence,
8 Mr. Chamberlain.

9 MR. CHAMBERLAIN: Pardon me?

10 THE COURT: It's not in evidence.

11 MR. CHAMBERLAIN: I think I got -- I would
12 like to ask this witness if he knows of what the
13 results were.

14 MR. BIANCAVILLA: Judge --

15 MR. CHAMBERLAIN: I think --

16 THE COURT: No, Mr. Chamberlain.

17 Sustained.

18 Q In any event, have you discussed your findings
19 with the FBI agent outside the courtroom here today?

20 MR. BIANCAVILLA: Objection.

21 THE COURT: I'll permit that.

22 A I met him this morning for the first time.

23 Q I understand that. Have you discussed your
24 findings with him today?

25 A No, I did not. I read his report and I had -- I

1 said, okay, that's it. I didn't discuss anything with him.

2 Q And did you not discuss your findings with him
3 before coming here today?

4 A No, I did not. First time I met him was this
5 morning.

6 Q Did you change your opinion from the time you --
7 the findings reported in your notes from your testimony here
8 today as to the type of cut?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: I'm going to sustain as to form.
11 Mr. Chamberlain.

12 Q Well, on the prior examination, microscopic
13 examination, of this cord, you made a finding that it was a
14 one directional cut, is that right?

15 A That's correct.

16 Q You have changed that opinion now?

17 A No, I have not.

18 Q You have not?

19 A I have not changed that opinion.

20 MR. CHAMBERLAIN: Nothing further, Detective.
21 Thank you.

22 THE COURT: Any redirect, Mr. Biancavilla?

23 MR. BIANCAVILLA: Yes, Judge.
24
25

1 REDIRECT EXAMINATION

2 BY MR. BIANCAVILLA:

3 Q Detective Shiraldi, with respect to the one
4 directional cut or one directional force, okay, could you
5 open up your bag of tools in front of you, please.

6 THE WITNESS: May I stand up, Judge?

7 THE COURT: Yes.

8 MR. BIANCAVILLA: Judge, could we have
9 Detective Shiraldi stand in front of the jury, please.

10 THE COURT: Yes.

11 You can go to the well, Detective.

12 (Whereupon, the witness leaves the witness
13 stand.)

14 Q Would you please explain to the jury what is a
15 one directional force?

16 A One directional force --

17 Q Please speak up.

18 A One directional force is, any time that there is,
19 just as you see, one curvature or one sign of direction or
20 field pushing of the object. That is done by --

21 THE COURT: You have to keep your voice up.

22 A When I say one directional force, what I'm saying
23 is, that the wire is put between these two jaws, and one is
24 stationary. One pushes through one direction. The wire is
25 held by one side. This, acting as a fulcrum in the middle

1 of a see-saw, stopping there. And the other jaw is pushing
2 against it, creating the wire to remain stable in one
3 aspect. And the top, where the sheering jaw comes from,
4 tends to bend that over. The slight play within that tool
5 gives that flattening that those pictures depict.

6 Q Now, does a pair of wire cutters --

7 MR. CHAMBERLAIN: I move to strike that last
8 part which was not responsive to the answer, Judge.

9 MR. BIANCAVILLA: This is an explanation of
10 one directional force.

11 THE COURT: It appears to me he was telling
12 us what a one directional force was.

13 I'm going to deny it, Mr. Chamberlain.

14 Q Does a pair of scissors apply a one directional
15 force?

16 A Yes, it does.

17 Q Okay. Explain how that works.

18 A Is there a pair of scissors around?

19 Q I don't believe so.

20 A If you put your hand in scissors, usually the
21 bottom blade stays stationary. Your thumb --

22 (Whereupon, the witness is handed a pair of
23 scissors.)

24 A The bottom, if you watch the blade, the bottom
25 blade stays stationary. The top blade does the cutting.

1 That's one directional force, pushing the paper down against
2 the fulcrum. This blade, creating the cut, pushing it down.
3 If we can blow this up on spectroscopy, this will be pushed
4 over, the paper will be pushed over.

5 Q That one directional force which you just
6 displayed with the scissors, is the same type of one
7 directional force used by the leatherman tool?

8 A Sheering top. Looping, sheering action, yes.

9 Q A pair of wire cutters, does that provide a one
10 directional force?

11 A No, it does not. As I depicted on my sketch --
12 as crude as that may be -- these meet together, creating the
13 apex. You will see the both portions pull in the wire, the
14 apex where it rips apart. Two directional. Both sides of
15 that wire you see creating then the break. Two directions,
16 both sides of this wire.

17 Q How about the larger, I believe you called
18 them --

19 A These are lineman dikes. Same thing, basically,
20 the same jaw. This has a pair of pliers in the front. But,
21 the same type of jaw. These jaws meet together. You will
22 see that same pinching of the wire, the break, the apex of
23 the wire sticking out.

24 Q What about the knife?

25 A The knife has a one directional force.

1 Q But --

2 A However, as I push down here (indicating), this
3 was your fulcrum. As I cut the wire, before I pushed down,
4 this was the fulcrum. When I looped it around, before that
5 one directional force, you saw there was another
6 characteristic there, there was that looping that I drew
7 out. There's that looping section. You would see this in
8 the wire. Then that one directional force would be pulled
9 out, where you might see some little actions here or here.

10 But, again, you're using a fulcrum, one
11 directional force. Scissors and that leatherman type tool,
12 one directional force. The opposite jaw being the
13 stationary position, where the other piece is the looping or
14 sheering effect giving that one direction.

15 Q Now, with respect to the examination of the
16 leatherman tool.

17 A You can sit down again, Detective.

18 (Whereupon, the witness resumes the witness
19 stand.)

20 Q When was the first time you performed any test
21 cuts with that leatherman tool?

22 A Today, as I was standing here.

23 Q In front of the jury?

24 A In front of the jury.

25 Q When was the first time you actually observed the

1 individual characteristics of that leatherman tool?

2 A On April 18th when an outside expert,
3 Mr. Petraco, and Mr. Chamberlain came to examine that tool
4 in my presence in police headquarters.

5 Q Okay. And do you have notes of that meeting?

6 A Yes, I do.

7 Q Do you recall what occurred at your laboratory on
8 April 18th?

9 A It was in the conference room of police
10 headquarters.

11 Q Who appeared in the conference room at police
12 headquarters?

13 A Mr. Chamberlain and Mr. Petraco.

14 Q Do you know Nicholas Petraco?

15 A Yes, I do.

16 Q Did you observe an examination of both the
17 leatherman tool and the ligature by Mr. Petraco?

18 A Yes, I did.

19 Q Please describe for the jury what your
20 observations were.

21 A He used our stereo light microscope. He did some
22 test cuts with the leatherman type tool, viewed it under the
23 stereo light microscope. Cut some aluminum wire, some
24 monofilament wire and documented that by digital
25 photography. He also examined a Budweiser beer bottle.

1 Q With respect to cutting an aluminum-type wire
2 with a -- with the leatherman tool, what's the purpose of
3 cutting an aluminum wire, and what's the difference from
4 cutting aluminum and copper?

5 A Aluminum is a very, sort of, soft, light
6 material. You could see some individualized
7 characteristics. You could --

8 Q This examination by Mr. Petraco and
9 Mr. Chamberlain took place on what date?

10 THE WITNESS: May I refer to my notes, Judge?

11 THE COURT: Yes. You can refresh your
12 recollection.

13 A April 18th at 1210 hours.

14 THE COURT: What year was that, sir?

15 A Year 2002.

16 Q Now, on November 8th of 2000 did you -- had you
17 performed any test cuts with that wire?

18 A No, I did not. With the wire?

19 Q No, I'm sorry. With the leatherman tool.

20 A No, I did not.

21 Q Okay. Thank you.

22 MR. BIANCAVILLA: I have nothing further.

23 THE COURT: Anything further,

24 Mr. Chamberlain?

25

1 RECROSS EXAMINATION

2 BY MR. CHAMBERLAIN:

3 Q Detective, you say you know Mr. Petraco, where do
4 you know him from?

5 MR. BIANCAVILLA: Objection.

6 MR. CHAMBERLAIN: He brought it out.

7 MR. BIANCAVILLA: Relevancy?

8 MR. CHAMBERLAIN: Why did he bring it out he
9 knows him?

10 MR. BIANCAVILLA: I didn't ask him if he knew
11 him. I said, did he appear at his laboratory.

12 MR. CHAMBERLAIN: You asked him, do you know
13 Mr. Petraco.

14 THE COURT: Actually, I think you did.

15 MR. BIANCAVILLA: Okay.

16 THE COURT: You can answer the question.

17 A Yes, I do know him.

18 Q Where did you know him from?

19 MR. BIANCAVILLA: Objection.

20 MR. CHAMBERLAIN: Same question, Judge.

21 THE COURT: I'll permit the answer.

22 A He was my -- a detective when I was employed at
23 the New York City Police Laboratory as a civilian chemist.

24 Q Was he also a professor of yours?

25 A He was a professor at John Jay College also, yes.

1 Q And this testimony here about scissors being a
2 one directional force tool, is that your testimony?

3 A That's how it appeared, yes. Any substance cut
4 with a sheering-type would be a one directional force. The
5 bottom jaw or blade acts as the fulcrum, the other blade
6 does the direction, and the force cuts.

7 Q Wasn't your testimony this morning that a knife
8 would be a one directional force, where it cuts through
9 whatever you're cutting?

10 MR. BIANCAVILLA: I object. This was
11 explained three times.

12 THE COURT: I'll permit him, since you
13 brought this area up on redirect.

14 MR. CHAMBERLAIN: I'm going to object to the
15 district attorney making comments.

16 THE COURT: Mr. Chamberlain, he made the
17 objection. I ruled upon it. I prefer that both of you
18 not argue your objections in front of the jury.

19 A Can you repeat the question?

20 THE COURT: Read back the question to the
21 Detective.

22 (Whereupon, the requested question was read
23 back by the reporter as instructed.)

24 A Again, as I explained, a knife does have a one
25 directional force. But it has a different dynamic than a

1 one directional force, which that acts as a looping,
2 sheering-type action.

3 As I told you with these pictures, that's your
4 one directional force with the knife. But you see these
5 little telltale signs, these other dynamics that involved in
6 the cutting with the one directional force with the simple
7 blade.

8 Q Wasn't it your testimony this morning that the
9 sheering-type cut would be two blades going against each
10 other, sheering?

11 A That's a sheering-type action, yes.

12 Q That was to distinguish an opposite really of a
13 one directional cut, was it not?

14 MR. BIANCAVILLA: Objection.

15 Q Wasn't that your testimony?

16 THE COURT: I will have to sustain it for
17 form, Mr. Chamberlain.

18 Q Did you discuss your opinion on a one directional
19 force being made by a scissor with the agent outside?

20 MR. BIANCAVILLA: Objection.

21 THE COURT: I don't think that was covered on
22 redirect.

23 MR. CHAMBERLAIN: Well, this business about
24 one directional force has just come up.

25 THE COURT: I will let you ask the question

1 again.

2 MR. BIANCAVILLA: It didn't come up.

3 MR. CHAMBERLAIN: His definition did.

4 THE COURT: Overruled. Ask the question.

5 Q Did you discuss that with the detective out --
6 with the agent outside?

7 A No, I did not.

8 Q You didn't discuss anything about your findings
9 or his findings at the time you have been sitting outside
10 with him?

11 A No, I did not.

12 MR. CHAMBERLAIN: Nothing further.

13 THE COURT: Anything further,

14 Mr. Biancavilla?

15 MR. BIANCAVILLA: No, Judge.

16 THE COURT: Thank you, Detective. You can
17 step down.

18 (WITNESS EXCUSED)

19 THE COURT: Mr. Biancavilla, will you call
20 your next witness, please?

21 MR. BIANCAVILLA: Carlo Rosati.

22 C A R L O R O S A T I, called as a witness by and on
23 behalf of the People, having been first duly sworn,
24 testified as follows:

25 THE CLERK: Thank you. Be seated.

1 THE COURT OFFICER: In a loud voice, would
2 you give your full name, spelling your last name, and
3 your County of residence.

4 THE WITNESS: Carlo Rosati, R-O-S-A-T-I. I
5 live in Loughton County, Virginia.

6 THE COURT OFFICER: Thank you. You may
7 inquire.

8 MR. BIANCAVILLA: Thank you, Judge.

9 DIRECT EXAMINATION

10 BY MR. BIANCAVILLA:

11 Q Good afternoon, Mr. Rosati.

12 A Good afternoon, sir.

13 Q Mr. Rosati, where are you employed?

14 A I'm employed by the Federal Bureau of
15 Investigation in Washington, DC, also known as the FBI.

16 Q And what is your position with the FBI?

17 A I am a firearms and tool marks examiner.

18 Q And how long have you been examining firearms and
19 tool marks?

20 A With the FBI Laboratory for the last seven
21 and-a-half years.

22 Q And prior to the FBI?

23 A I started my employment with the FBI in 1977 as a
24 fingerprint examiner. I became a technician with them in
25 1979 through 1990. 1990 through 1994 I was a firearm and

1 tool mark examiner with the Bureau of Alcohol and Firearms
2 laboratory in Rockville, Maryland.

3 Q And what training have you had in that area?

4 A The majority of my training has been on-the-job
5 training by other examiners. But I have attended
6 specialized courses in the discipline of firearms and tool
7 marks. I have also traveled to various factories to observe
8 their manufacturing process, as well as to read different
9 articles that are published in the Association of Firearms
10 and Tool Mark Examiners Journals, of which I am also a
11 member and attend their training seminars whenever possible.

12 Q With respect to tool marks and tool marks
13 impressions, approximately how many examinations have you
14 performed over your career, if you can give us a number?

15 A Thousands of examinations. Because, firearm
16 evidence is also tool mark evidence.

17 Q And have you been qualified as an expert in this
18 particular area?

19 A Yes, I have.

20 Q All right. And have you testified in courts as
21 an expert in tool mark examination?

22 A Yes, I have.

23 Q Now, are all tool mark examiners also firearms
24 examiners?

25 A No. They are not.

1 Q So, different agencies have different -- split up
2 their disciplines differently?

3 A Yes, sir, they do.

4 Q With the FBI, they do tool mark and firearms?

5 A That's correct.

6 Q Other agencies may do tool mark and hair
7 microscopy?

8 A Yes.

9 Q Because they all involve the use of microscopes?

10 A Yes. it depends upon their protocols.

11 Q You examine certain pieces of evidence which were
12 sent to you in this case?

13 A Yes, sir, I did.

14 Q Was one of them a, what's been referred to as, a
15 leatherman tool?

16 A Yes, sir.

17 Q Was another item a ligature?

18 I'm going to show you what is in evidence as
19 People's 43 and People's 44.

20 These have been involved in front of the jury, so
21 you may have to move them around to see your identification
22 marks.

23 Do you recognize the leatherman tool?

24 A Yes, I do. My identification marks are on the
25 packaging. My identification marks are also on the

1 packaging of the wires which were submitted, which I believe
2 you called the ligature.

3 Q And I could you tell the jury when you received
4 those items?

5 A These items were received in the FBI Laboratory
6 on June 30th of 2000. I signed for the evidence from our
7 evidence control center, July 5th of 2000.

8 Q Could you briefly explain to the jury what you
9 did with those items?

10 A With these particular items, I followed the
11 normal laboratory procedures of examination of evidence.

12 I initially started my paperwork and then
13 examined the items on an initial examination of normal
14 viewing, starting to create notes for me to be able to
15 recall this information for you today.

16 I then proceeded to look at the items of evidence
17 under a stereo microscope, which allows me to look at
18 evidence up to four times normal vision. And upon
19 completion of the initial examinations under the microscope,
20 I proceeded to determine what I would have to do to make
21 appropriate test cuts for me to make comparisons from the
22 multi tool, the leatherman multi tool, to have specimens
23 that are available for me to look at under comparison
24 microscope.

25 Comparison microscope is one microscope that has

1 two sets of optics that allows me to look at two things at
2 the same time.

3 Upon completion of all of my initial
4 examinations, I had reached a conclusion for this evidence.

5 Q Okay. And the examinations that you made, when
6 you said test cuts, please explain what you did regarding
7 the test cuts.

8 A Well, from looking at -- what is classified as
9 People's Exhibit 43, looking at the end of the wires, I
10 could determine the type of tool mark that was present.

11 From my training and from my experience in former
12 employment, I spoke of my employment with the FBI and with
13 ATF, and, of course, I had recognition of various types of
14 tools marks in working for them. But I also worked
15 throughout high school and college in a machine shop, and I
16 have a pretty extensive knowledge of kinds and types of tool
17 markings they will create.

18 So, upon looking at, again, People's Exhibit 43,
19 I could determine that there was a sheering-type of tool
20 mark at the end of this evidence.

21 Q What type of tools produce a sheering-type tool
22 mark?

23 MR. CHAMBERLAIN: Can we get a date, when
24 this was done?

25 MR. BIANCAVILLA: He gave a date, Judge.

1 THE COURT: Could you tell us when this was
2 done?

3 THE WITNESS: Yes, your Honor. May I refer
4 to my notes?

5 It was in October.

6 THE COURT: You can refresh your
7 recollection.

8 THE WITNESS: October 17th of 2000.

9 Q What type of tools produced the type of
10 observations you made on that wire?

11 A Well, any type of sheering tool. A sheering tool
12 is a type of tool which will have two blades, which, as they
13 impress against the items that they are cutting, they will
14 actually pass alongside of each other. One blade works as
15 an anvil, the other blade will work as the cutter. In
16 cutting through this particular evidence. And the evidence
17 itself will actually have drawing marks toward a action
18 through the item of evidence, which will have tool marks on.

19 Q Let me ask you a question, I'm going to show you
20 a pair of scissors.

21 A Yes, sir.

22 Q Does this pair of scissors produce that kind of
23 effect?

24 A Yes, they do.

25 Q How about a pair of dikes like this?

1 A Not normally. These would be pinching-type of
2 tools.

3 Q Pinching-type tools. Okay. How about a pair of
4 wire cutters?

5 A Those are diagonal cutters, pinching-type tools
6 also.

7 Q How about the leatherman tool in front of you?

8 A The leatherman tool that is in front of me, first
9 observation would appear to be a pinching-type of tool.
10 However, on this particular one, it actually is a
11 sheering-type tool. The two blades pass alongside of each
12 other. They start to impress, but then they will pass
13 alongside of each other as they're cutting through the
14 material.

15 Q Why does that particular tool operate in the
16 fashion you just testified?

17 A Well, it appears to be the design of this
18 particular tool.

19 Again, this one here is different from the one I
20 have, which is made by a different company. The one I have
21 is a pinching-type tool, where the two jaws come and meet
22 each other.

23 This particular type tool is either made that way
24 or has been forced out of alignment and is a sheering-type
25 tool.

1 Q Could that be from wear?

2 A Yes, it could.

3 Q Now, did you have an opinion with respect to the
4 comparison in comparing the test cuts you made with that
5 leatherman tool and your observations of the cut end of the
6 ligature with respect to that tool?

7 A Yes, sir.

8 Q Okay. Could you please tell us what your opinion
9 is?

10 A My opinion is that the leatherman multi purpose
11 tool could have cut those wires, but I cannot say
12 definitively.

13 Q Thank you.

14 MR. BIANCAVILLA: I have no further
15 questions.

16 THE COURT: Mr. Chamberlain.

17 CROSS-EXAMINATION

18 BY MR. CHAMBERLAIN:

19 Q Your definition of a sheering-type tool includes
20 scissors, two blades cutting across each other, is that
21 right?

22 A Yes, sir.

23 Q Would it include a knife?

24 A No, sir. That would be a single blade tool.

25 That could be in a sheering-type motion, but it is -- you

1 have to preface it as a single blade tool. Is tis a way to
2 define that and observe that on the item that is used to
3 cut.

4 Q And would a knife be a one directional-type tool?

5 A Yes, sir.

6 Q Okay. As distinguished from the sheering-type
7 that you found?

8 A Yes, sir.

9 Q All right, Agent. And you indicated that this
10 particular tool could have been forced out of being a
11 pinching-type tool by wear?

12 A Either by wear or abuse. I'm unable to determine
13 that. Or it may have been manufactured that way. I'm
14 unable to determine that.

15 Q Excuse me, I didn't mean to interrupt. It may
16 have been manufactured that way? You're just speculating
17 here, you can't tell us with any reasonable degree of
18 certainty that it was converted from a pinching-type tool to
19 a sheering-type tool by either abuse or wear?

20 A That's correct.

21 Q Now, Agent, you indicated that you got -- the FBI
22 got this tool on June 30th, you signed for this on July 5th
23 and you conducted the experiments or investigation of it on
24 October 17th. Are those dates correct?

25 A That's correct.

1 Q Anything between July 5th and October 17th?

2 A No, sir.

3 Q Aside from -- aside from the investigation into
4 the type of tool and whether it was a sheering-type tool and
5 the cuts on the cord, were you -- was anything else being
6 done by the FBI with respect to these exhibits that were
7 sent to you?

8 A A request was made for a chemistry-type
9 examination, to determine if any foreign material on the
10 tool could be compared to People's Exhibit 43's wires.

11 Q And was that done?

12 A No, it was not.

13 Q Do you know how that request was made? Was it
14 made in writing?

15 A Yes, sir, it was.

16 Q Do you write back to say, no, or how did you
17 communicate that fact to the requesting authority?

18 A I called the phone number which was supplied to
19 me on -- I have to refer to my notes again.

20 Q Was it on October 12th?

21 A Yes, sir.

22 Q And did you talk to the detective who was in SIB
23 who was handling this investigation for the Nassau County
24 investigation on this tool in this court?

25 A I spoke to a detective. I don't remember exactly

1 which one it was. My notes only refer to as called
2 detective.

3 Q You spoke to a detective Shiraldi outside a
4 little bit, I take it?

5 A Yes, sir.

6 Q Was he the person you spoke to?

7 A I don't recall. All I know is that I called and
8 informed them that I could not perform those examinations
9 that were requested.

10 Q Was that all?

11 A Yes, sir.

12 Q Don't your notes indicate that that detective had
13 some questions?

14 A No, sir, I don't, on my phone call log. No, sir.
15 Just what I -- I had questions concerning tool marks and
16 chemistry exams. And my reason for my call was to inform
17 him that the FBI laboratory at that point in time could not
18 perform the chemistry exam.

19 Q Did you ask that detective as to whether or not
20 they had made any previous examination of these items?

21 A No, sir.

22 Q When this was sent to you, were you told there
23 were no previous examinations of these items?

24 A The letter I believe indicates that, sir.

25 Q And, so, you didn't discuss whether this was a

1 one directional force cut or sheering-type cut?

2 A No, sir.

3 Q Clearly, there's a significant difference between
4 those two type cuttings?

5 A Yes, sir.

6 Q And your finding, Agent Rosati, is that the
7 results of your tests were inconclusive, is that right?

8 A Yes, sir, that's correct.

9 Q And in addition to examining that
10 microscopically, did you do anything else, didn't you make
11 some cuts?

12 A Yes, sir, I did.

13 Q And how many cuts did you make?

14 A I made several different cuts.

15 Q Okay. And did you, Detective -- I'm sorry,
16 Agent, I take it that, you agree, that in forensic science
17 it's extremely important to note down your findings
18 immediately upon doing that so that you don't forget them or
19 confuse them with some other evaluation?

20 A That's correct, sir.

21 Q Did you make notes of your findings at the time
22 of those tests?

23 A Yes, sir, I did.

24 Q On the 17th of October?

25 A Yes, sir, I did.

1 Q I'm sorry, was it on the 12th?

2 A No, sir, it was the 17th.

3 Q Would you check the tool mark?

4 A Yes, sir. I stand with the 17th as being the
5 date which my examinations were being conducted. The notes
6 were written on the 12th. But the conclusions are written
7 on the 17th.

8 Q Oh, the test was done on the 12th?

9 A The note sheets were written on the 12th.

10 Q Well, wouldn't the note sheets be done -- they
11 wouldn't be done before you did the test?

12 A Yes, sir, they would.

13 Q They would?

14 A Yes, sir. I stand corrected if earlier I said
15 they were all done on the 17th. I believe I looked at the
16 date of the 17th as my conclusions as being the date I wrote
17 them all.

18 Q Thank you. And your notes indicate that you had
19 seven sheering-type tool marks, is that right?

20 A Several.

21 Q Several?

22 A Yes, sir.

23 Q Isn't there a number seven there?

24 MR. BIANCAVILLA: Judge, I'm going to object.

25 I let this go --

1 THE COURT: Yes, Mr. Chamberlain. Don't ask
2 the witness to testify as to the contents of the
3 document.

4 Q Having reviewed your notes, would you tell us if
5 there was a specific number that you recall?

6 A Yes, sir. Seven sheering-type tool marks. No
7 conclusion. Several test cuts from K-1.

8 Q Thank you. Now, in addition to no conclusion,
9 were your findings that it could not be determined whether
10 or not K-1 cut Q-1?

11 A I'm sorry, sir. Could you repeat that for me?

12 Q Your tests indicated that it could not be
13 determined whether or not K-1 cut Q-1?

14 A Yes, sir, that's correct.

15 Q And would you explain to the jury the K-1 and Q-1
16 designation?

17 A K-1 would be the multi tool, Q-1 would be all of
18 the tool marks from the wires which were submitted.

19 Q I'm going to show you a couple of documents and
20 ask you --

21 MR. CHAMBERLAIN: I ask these be marked.

22 THE COURT: Do you want them marked together?

23 MR. CHAMBERLAIN: Yes, if you will, Judge.

24 THE COURT: Okay.

25 (Whereupon, the referred to item is received

1 and marked Defendant's Exhibit J for identification by
2 the reporter as instructed.)

3 THE COURT OFFICER: Defendant's J for
4 identification.

5 THE WITNESS: Thank you.

6 A Yes, sir.

7 Q Now, you indicated, Agent Rosati, that you have a
8 leatherman's tool yourself?

9 A No, sir. I have a Gerber.

10 Q You have a Gerber. There are, in fact, quite a
11 few different styles and types of leatherman tools, are
12 there not?

13 A Yes, sir, there are.

14 Q Do you know, Agent, whether or not those tools
15 all have sheering-type cutting edges in addition to a knife
16 which is separate and apart from that?

17 A No, sir. I would have to examine all the
18 different models because they probably have different
19 appliabilities.

20 Q Do those documents assist you in that
21 examination?

22 A No, sir, they don't. Because in most general
23 circumstances they don't describe the part of the work that
24 I do to describe something as whether it's a pinching-type
25 tool or sheering-type tool. If I'm missing it, sir, I would

1 appreciate if you could point it out to me.

2 Q I thought you might know more about leatherman
3 tools than general knowledge.

4 A I have an above knowledge than most individuals.
5 But when it gets down to manufacturers' individuality, they
6 mark particular things for use. And there is quite a few
7 numbers of different manufacturers that produce such tools
8 as this.

9 Q So, your final conclusions of the FBI was that
10 this tool could not be determined -- could not be determined
11 that this tool cut this cord, right?

12 A That's correct.

13 Q And any of a number of other type sheering-type
14 tools could have cut it, is that correct?

15 A That's correct.

16 Q How many other types of sheering tools are there?

17 A Quite a few number, sir. I couldn't even start
18 to guess.

19 Q That's numbers of types?

20 A Yes, sir.

21 Q So, if there are a number of types, there are
22 thousands, perhaps, of tools --

23 A I don't know that.

24 Q In common? Sheering-type tools in common use.

25 A I don't know, sir, if it's tens, hundreds or

1 thousands.

2 Q Hundred of thousands.

3 MR. CHAMBERLAIN: Thanks very much, I
4 appreciate it.

5 THE COURT: Redirect?

6 MR. BIANCAVILLA: Sure.

7 REDIRECT EXAMINATION

8 BY MR. BIANCAVILLA:

9 Q Mr. Rosati --

10 A Yes, sir.

11 Q The leatherman tool that is in evidence, I
12 believe it's People's 43?

13 A 44.

14 Q You made the test cuts with that leatherman tool.
15 Did it produce cuts similar to the one you observed --

16 A Yes, sir.

17 Q On the ligature?

18 A Yes, sir.

19 Q Now, the one directional force that
20 Mr. Chamberlain was asking you about, does a scissor
21 provide -- is a scissor an example of a one directional
22 force type of cut? Can you explain how that works in
23 terms --

24 MR. CHAMBERLAIN: I would like to have one
25 question answered, not two or three.

1 THE COURT: Excuse me, if you have an
2 objection --

3 MR. CHAMBERLAIN: I object to multiple
4 questions, Judge.

5 MR. BIANCAVILLA: Let me withdraw that.

6 THE COURT: Okay, go ahead.

7 Q You described before about a cutting and a
8 focrum, I believe you called it, or what was the term you
9 used?

10 A An anvil.

11 Q Anvil. Could you explain that concept, please?

12 A Yes, sir. Even though one blade is producing the
13 cutting, the second blade is impressing into the opposite
14 side of the test material.

15 So, in a sheering-type action you have motion
16 going through the cutting product, but there's also force
17 being exerted against the opposite side and it's observable
18 under microscopic examination.

19 Q Okay. When you say sheering-type action, you
20 observed that sheering-type action on that ligature,
21 correct?

22 A Yes, sir.

23 Q And that's the same sheering-type action that you
24 observed from that leatherman tool when you made your test
25 cuts, correct?

1 A Yes, sir.

2 MR. BIANCAVILLA: Okay, I have nothing
3 further.

4 THE COURT: Mr. Chamberlain, anything
5 further?

6 RE CROSS-EXAMINATION

7 BY MR. CHAMBERLAIN:

8 Q When you say it's the same type, in no way can
9 you say that that tool made the cuts you found on that cord
10 is that right?

11 A That's correct, sir.

12 THE COURT: Anything further?

13 Q The cut, the sheering-type tool, scissor-type, as
14 distinguished from the knife which is generally one
15 directional, is that correct?

16 A That's correct.

17 THE COURT: Mr. Biancavilla.

18 REDIRECT EXAMINATION

19 BY MR. BIANCAVILLA:

20 Q Could you describe whether that cord was cut with
21 a knife?

22 A Yes, I would.

23 Q What would you observe if that cord had been cut
24 with a knife?

25 A I would observe one directional flow. I would

1 observe -- these particular wires are multi strand wires.
2 And I would have observed the continuing flow only in one
3 direction instead of having any force from the other side
4 embedded into them.

5 Q So, you could definitely say that that cord was
6 not cut with -- cut with a knife?

7 A Yes, sir.

8 MR. BIANCAVILLA: Nothing further.

9 THE COURT: Mr. Chamberlain, recross?

10 RECROSS EXAMINATION

11 BY MR. CHAMBERLAIN:

12 Q Or a one directional force?

13 A I'm sorry, I don't follow your question.

14 MR. CHAMBERLAIN: Withdrawn.

15 Nothing further, Judge.

16 MR. BIANCAVILLA: Thank you, Judge. Nothing
17 further.

18 THE COURT: Thank you, sir. You can step
19 down.

20 THE WITNESS: Thank you, your Honor.

21 (WITNESS EXCUSED)

22 THE COURT: Can I see counsel at the Bench,
23 please.

24 (Whereupon, there is a discussion held at the
25 Bench, off the record, between the Court and Counsel.)

1 THE COURT: Ladies and gentlemen, at this
2 time we're going to excuse you for the day, and ask you
3 to come back at 9:30 Monday morning.

4 Have a nice weekend. I'm going to remind
5 you, like I do each and every time, do not discuss the
6 case among yourselves or with anyone else. Keep an
7 open mind. Do not form or express any opinions until
8 the entire case has been completed. Do not read or
9 listen to any accounts of the case, should it be
10 reported in the media. Do not visit or view any
11 premises mentioned. Finally, do not permit any party
12 to discuss this case or an attempt to influence you.
13 You must promptly report to the Court any violation
14 thereof.

15 Have a good weekend. See you Monday morning.

16 THE COURT OFFICER: Follow me, please.

17 (Whereupon, the sworn jury and alternates
18 leave the courtroom)

19 THE COURT: Counsel, come forward.

20 (Whereupon, court stands in recess. The
21 trial is adjourned to Monday, May 13th, 2002 at
22 9:30 a.m.)

23

24

25

Proceedings

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Frank DeFalco	420	424		
Melissa Notarnicola	440	445		
Penny Shouse	449	454		
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1 STATE OF NEW YORK : NASSAU COUNTY
2 COUNTY COURT : PART XIV

3 THE PEOPLE OF THE STATE OF NEW YORK, :

4 - against - : IND: 1456N-00

5 PAUL SCRIMO, :

CONTINUED

TRIAL

6 Defendant. :

7 May 13, 2002

262 Old Country Road

Mineola, New York

8 B E F O R E:

9 THE HONORABLE JEFFREY BROWN,

10 County Court Judge.

11 A P P E A R A N C E S:

12 (As previously noted.)

13 * * * *

14 THE CLERK: Case on trial continues, the People
15 of the State of New York versus Paul Scrimo,
16 Indictment 1456N of 2000.

17 All parties are present. The jurors are not
18 present at this time.

19 Are the People ready?

20 MR. BIANCAVILLA: Ready.

21 THE CLERK: Defendant ready?

22 MR. CHAMBERLAIN: Ready.

23 COURT OFFICER: Jury entering.

24 (Whereupon, the sworn jurors entered the
25 courtroom and resumed their respective seats.)

People v. Scrimo

1 THE CLERK: Do both sides stipulate that all
2 sworn jurors are present and seated properly?

3 MR. BIANCAVILLA: Yes.

4 MR. CHAMBERLAIN: So stipulated.

5 THE COURT: Good morning, ladies and gentlemen.
6 I hope you had a nice weekend. We are ready to
7 continue with the trial.

8 Call your next witness, Mr. Biancavilla.

9 MR. BIANCAVILLA: Detective Kevin McCarthy.
10 D E T E C T I V E K E V I N M C C A R T Y, a witness
11 called on behalf of the People, having been duly sworn,
12 testified as follows:

13 COURT OFFICER: In a loud, clear voice, give your
14 full name, spelling your last name, shield number and
15 present command.

16 THE WITNESS: Detective Kevin McCarthy,
17 M-C-C-A-R-T-H-Y, shield 707. My command is the
18 Scientific Investigation Bureau.

19 THE COURT: You may inquire.

20 MR. BIANCAVILLA: Thank you, Judge.

21 DIRECT EXAMINATION

22 BY MR. BIANCAVILLA:

23 Q Good morning.

24 A Good morning.

25 Q Detective McCarthy, will you tell the jury how

People - Det. McCarthy - Direct

1 long you have been a detective?

2 A I have been a detective approximately 11 years.

3 Q And how long have you been a police officer?

4 A I have been a police officer for approximately 16
5 years.

6 Q And how long have you been a member of the
7 Scientific Investigation Bureau?

8 A I have been a member of the Scientific
9 Investigation Bureau for approximately 14 years.

10 Q Do you specialize in a particular area at the
11 Scientific Investigation Bureau?

12 A Yes, I am a serologist.

13 Q Please, briefly describe for the jury what a
14 serologist does?

15 A A serologist studies and identifies blood and body
16 fluids.

17 Q What are your particular responsibilities at the
18 Scientific Investigation Bureau?

19 A My duties are to examine evidence, do some
20 preliminary testing, and we contract out further testing,
21 DNA testing with a company.

22 Q Could you, please, give the jury your educational
23 background?

24 A I have an associates degree from SUNY Farmingdale.
25 I have a bachelor of science degree from SUNY/Stonybrook;

People - Det. McCarthy - Direct

1 and I have 12 graduate credits, three from CW Post
2 University in biochemistry at graduate level and nine
3 courses I took at Quantico, Virginia, the FBI Academy. I
4 got the credits through the University of Virginia.

5 Q In addition to your educational background, what,
6 if any, training have you received with respect to
7 serology?

8 A I worked in the New York Institute of Technology
9 on a microbiology teaching lab. I worked in the
10 pharmacology department at SUNY/Stonybrook in a research
11 lab. One doing research on antiviral drugs and one doing
12 research on anticoagulants.

13 Q Are you a member of any scientific investigation
14 organizations or societies?

15 A I am not a member at this time.

16 Q Have you testified as an expert in serology?

17 A Yes, I have.

18 Q How many times?

19 A Approximately 45 times.

20 Q In how many states?

21 A Just in New York State.

22 Q How many times have you been qualified as an
23 expert in serology in New York State?

24 A Again, approximately 45 times.

25 Q Have you ever not been qualified as an expert in

People - Det. McCarthy - Direct

1 any court?

2 A No, I have not.

3 Q Did there come a time when you sent out various
4 items of evidence from this case for DNA analysis?

5 A Yes, I did.

6 Q I am going to direct your attention to April 18th
7 of the year 2000. Did you send out material with regard
8 to this case?

9 A Yes, I did.

10 Q Where were the samples sent?

11 A The samples were sent to LabCorp, Laboratory
12 Corporation of American.

13 Q And how were they sent?

14 A They were sent via FedEx.

15 Q Please tell the jury, what is Laboratory
16 Corporation of America?

17 A Laboratory Corporation of American is a large
18 laboratory. Among other testing, they do, they do DNA
19 testing for us. It's a contract laboratory. We have a
20 contract with them.

21 Q Could you describe for the jury what was sent?

22 A On the first mailing?

23 Q That would be the mailing on April 18th of 2000.

24 A Right. On April 18th, I sent the morgue blood of
25 Ruth Williams in relation to this case. I sent four crime

People - Det. McCarthy - Direct

1 scene samples which were cigarette butts. I sent a swab
2 from -- another crime scene item which was a Budweiser
3 bottle.

4 Q With respect to the four crime scene items, the
5 cigarette butts, could you tell us what the crime scene
6 item number was of the four cigarette butts you sent out?

7 A May I refer to my notes?

8 MR. BIANCAVILLA: May he, Judge?

9 THE COURT: Yes, you can do that to refresh your
10 recollection.

11 A Crime Scene items were 7, 8, 9 and 15.

12 MR. CHAMBERLAIN: May I have what page of that
13 Crime Scene report we are referring to?

14 THE COURT: Yes.

15 THE WITNESS: I'm referring to the LabCorp
16 mailing form that I filled out.

17 Q Crime scene number seven was what?

18 A Crime scene item seven was a cigarette butt.

19 Q What type of cigarette butt?

20 A I would have to refer to the crime scene sheet
21 now.

22 Q Please do.

23 A It was a Vantage cigarette butt.

24 Q Crime scene item number eight?

25 A Number eight was a brown filtered cigarette butt.

People - Det. McCarthy - Direct

1 Q And Crime scene number nine?

2 A Nine was, again, another Vantage cigarette.

3 Q And crime scene number 15?

4 A Crime scene 15 was a brown cigarette butt.

5 Q Now, you said you took a swab from a beer bottle.

6 What is the crime scene number on the beer bottle that you
7 swabbed?

8 A The crime scene item on the beer bottle is item
9 number 21.

10 Q Would you, please, describe for the jury what you
11 did with that beer bottle in the serology unit of the
12 Scientific Investigation Bureau?

13 A Yes. I took the beer bottle. I took a moistened
14 Q-tip swab and I swabbed the exterior edge of the bottle
15 where your mouth would go on to drink the beer.

16 Q What did you do with the swab then?

17 A The swab was allowed to air dry and it was sent to
18 Lab Corp for DNA analysis.

19 Q That was along with the four cigarette butts
20 together with the morgue blood of Ruth Williams?

21 A That's correct.

22 Q And that was on April 18th of 2000?

23 A That's correct.

24 MR. BIANCAVILLA: I would ask the witness be
25 shown People's 39 in evidence and People's 35 in

People - Det. McCarthy - Direct

1 evidence.

2 Q Detective, do you recognize those two items that
3 you are being shown?

4 A Yes, this is the beer bottle that I swabbed around
5 the mouth area, the Budweiser bottle, crime scene item
6 number 21. These are the crime scene items, the cigarette
7 butts that I referred to.

8 Q How were those items sent to LabCorp?

9 A The beer bottle, the swab, was sent to Lab Corp.
10 It was a Q-tip swabbed. It was sampled around the neck of
11 the bottle. It's placed in a Ziplock bag and
12 appropriately labeled.

13 Q How did the items get to LabCorp?

14 A FedEx.

15 MR. BIANCAVILLA: Thank you. You can take those
16 back from the officer.

17 Q Detective, I'm going to direct your attention to
18 May 25th of 2000. Did you send additional items to
19 LabCorp for DNA analysis?

20 A Yes, I did.

21 Q Please describe for the jury what items were sent
22 on May 25th of 2000?

23 A The -- there were three fingernail samples from
24 the deceased, Ruth Williams, that were sent out, R2, R3
25 and R5.

People - Det. McCarthy - Direct

1 Q What else?

2 A And there were oral swabs that were obtained from
3 John Kane. Those were oral swabs taken by a detective
4 from inside of his mouth for a standard and a blood
5 standard card of Paul Scrimo.

6 Q What else?

7 A Can I refer to my notes?

8 Q Sure.

9 A There was a swab from a drinking glass, crime
10 scene item number 19.

11 MR. CHAMBERLAIN: May we have the portion of the
12 record the detective is referring to right now?

13 THE WITNESS: Yes, it's my LabCorp mailing form.

14 MR. CHAMBERLAIN: A separate form?

15 THE WITNESS: It's a different form for a
16 different mailing on another day.

17 MR. CHAMBERLAIN: Thank you.

18 A Okay. And swabbings from a black wire cord.

19 Q They were all sent to LabCorp on May 25th of 2000?

20 A That's correct.

21 Q Now, prior to sending the fingernail scrapings or
22 fingernail cuttings to LabCorp Corp, did you examine the
23 fingernail cuttings that you received from the Nassau
24 County Medical Examiner's Office?

25 A Yes, I did.

People - Det. McCarthy - Direct

1 Q What did you find when you examined the fingernail
2 cuttings from the Nassau County Medical Examiners' Office?

3 A I examined them with a stereomicroscope and the
4 samples R2, R3, and R5 had some material under the
5 fingernail.

6 MR. CHAMBERLAIN: I would object to this, Judge.
7 This was not --

8 MR. BIANCAVILLA: Judge, I object to this in
9 front of the jury.

10 THE COURT: First of all, I'll overrule the
11 objection with respect to this question.

12 If there's something you want to make a record
13 about, you could do that.

14 Come forward.

15 Step down, Detective.

16 (Whereupon, the following took place at the
17 bench outside of the hearing of the defendant and
18 jury.)

19 THE COURT: Gentlemen?

20 MR. CHAMBERLAIN: Judge, we were provided with
21 material in response to our discovery demands, Rosario
22 material, with respect to what findings the various
23 units of the SIB and the serology department, the ME's
24 office, found and so forth. There was no reference to
25 this finding.

People - Det. McCarthy - Direct

1 THE COURT: Which finding?

2 MR. CHAMBERLAIN: The finding he made --

3 THE COURT: He made an observation of the
4 fingernail scrapings.

5 MR. CHAMBERLAIN: Microscopic examination.
6 There's no notation of that in the record whatsoever.

7 MR. BIANCAVILLA: So you can cross-examine on
8 it.

9 MR. CHAMBERLAIN: I think it's improper to bring
10 it up at this point.

11 MR. BIANCAVILLA: You can cross-examine him on
12 it.

13 THE COURT: Mr. Chamberlain, you know as long as
14 the People have complied with all the discovery rules
15 with respect to Criminal Procedure Law 240 as well as
16 Rosario rules of all documents the detective filled
17 out at the time that he handled these materials and
18 made any observations, they have complied.

19 As far as anything else, you certainly have a
20 right to cross-examine the witness with respect to
21 any, as you say, alleged failure of documenting his
22 observations.

23 Your objection is overruled.

24 (Whereupon, the following took place in open
25 court.)

People - Det. McCarthy - Direct

1 MR. BIANCAVILLA: May I continue, your Honor?

2 THE COURT: Yes.

3 CONTINUED DIRECT

4 BY MR. BIANCAVILLA:

5 Q Detective, how many fingernail cuttings did you
6 examine at your lab?

7 A There were ten.

8 Q You used what type of instrument to examine these
9 fingernails?

10 A Stereo microscope.

11 Q With respect to what you referred to as R2, R3 and
12 R5, just briefly describe to the jury what were R2, R3 and
13 R5?

14 A R2, R3 and R5 is a designation by the medical
15 examiners for the right hand, the thumb being number one,
16 the next finger two, three, four and five.

17 Q Please describe for the jury what, if anything,
18 you observed on fingernail cuttings R2, R3 and R5?

19 A On those cuttings there were some material,
20 visible material underneath of it. It was brownish in
21 color, but I also noticed that there was some old nail
22 polish, small minute pieces of nail polish. So it was a
23 mixture of materials.

24 Q Those three cuttings, those are the cuttings you
25 referred to when you said you sent them to Laboratory

People - Det. McCarthy - Direct

1 Corporation of America for DNA analysis; correct?

2 A Yes.

3 MR. BIANCAVILLA: I would ask the witness be
4 shown what has been marked for identification as
5 People's 80.

6 Q Detective, you have been shown what has been
7 marked for identification as People's Exhibit 80. Do you
8 recognize that?

9 A Yes.

10 Q What do you recognize that to be?

11 A This is the tubes that contain the three
12 fingernail clippings and these are the swabs from the
13 black cord and the drinking glass.

14 Q Now -- okay. You can put those down.

15 Did there come a time, Detective, when you
16 received the fingernail cuttings back from LabCorp after
17 they had been analyzed?

18 A Yes, I did.

19 Q Did you perform further examination on those
20 particular fingernail cuttings?

21 A I observed further testing being done on them at
22 the Suffolk County Crime Lab.

23 Q With respect to Crime Scene items R2 and R5, what
24 type of testing was done on R2 and R5?

25 A May I refer to my notes?

People - Det. McCarthy - Direct

1 Q Yes.

2 MR. CHAMBERLAIN: May we have a representation as
3 to what notes?

4 THE WITNESS: It's my report, page two.

5 MR. CHAMBERLAIN: May I see it, Detective?

6 THE COURT: Show it to Mr. Chamberlain.

7 Q What tests were performed on fingernail cutting R2
8 and R5?

9 A R2 and R5 were tested for the presence of seminal
10 fluid.

11 Q Is there a particular name for that test?

12 A It's a P30 Abacard test. That's a company name,
13 A-B-A-C-A-R-D.

14 Q Please describe for the jury what a P30 Abacard
15 test is?

16 A It's a test. It's similar to a pregnancy test kit
17 where you take a sample and you put it in the loading well
18 of this plastic container and the sample runs up the
19 container. In this instance, it's got monoclonal
20 antibodies in it for the antigen P30 that's present in the
21 male prostate and it's also an indicator for seminal
22 fluid. If it's positive, it would have two lines on it.
23 If it's negative, it would just have one control line on
24 it.

25 Q What were the results of the tests on fingernail

People - Det. McCarthy - Direct

1 scrapings R2 and R5?

2 A They were negative.

3 Q With respect to fingernail cutting R3, did you --
4 was a particular type of test performed on fingernail
5 cutting R3?

6 A Yes. R3 was the fingernail cutting --

7 Q Just tell us what you did to R3?

8 A That was the test I observed for the presence of
9 human hemoglobin.

10 Q Was there a particular type of test done on it?

11 A Yes.

12 Q What is the name of that?

13 A Antihuman globulin test that's on -- that's also
14 made on these cards.

15 Q What is the card called?

16 A It's called hematrace.

17 Q What is hemoglobin?

18 A It's the oxygen carrying molecule present in the
19 red blood cells.

20 Q Were you looking for on that fingernail cutting R3
21 when you performed that test?

22 A We were looking for the presence of human blood.

23 Q What were the results of that test?

24 A It was negative.

25 Q Now, the test that you performed on R2 and R5, the

People - Det. McCarthy - Direct

1 P30 test, could you tell the jury what the level of
2 sensitivity is of that test in terms of how much of the
3 antigen that you spoke of would have to be present in
4 order to get a result on that test?

5 A Yes, it's a very minute amount of P30 antigen,
6 four nanograms per million.

7 Q Four nanograms?

8 A Yes.

9 Q With respect to the amount of hemoglobin that
10 would be necessary in order to obtain a result on your
11 hematrace card, how much hemoglobin would need to be
12 present?

13 A Fifty nanograms per mill.

14 MR. BIANCAVILLA: I am going to ask this be
15 marked as People's 83.

16 (Whereupon, the above-mentioned item was
17 marked as People's Exhibit 83 for identification
18 only.)

19 Q Detective, do you recognize that?

20 A Yes, it's a pack of Sweet and Low.

21 Q Will that assist you in explaining to the jury the
22 sensitivity of the P30 test and hematrace test conducted
23 on these?

24 A Yes, it would.

25 MR. BIANCAVILLA: We would offer that, Judge?

People - Det. McCarthy - Direct

1 THE COURT: Show it to Mr. Chamberlain, please.

2 MR. CHAMBERLAIN: Voir dire?

3 THE COURT: Yes.

4 VOIR DIRE EXAMINATION

5 BY MR. CHAMBERLAIN:

6 Q This has nothing to do with the evidence in the
7 case, it's just for demonstration purposes here?

8 A Correct.

9 MR. CHAMBERLAIN: No objection.

10 THE COURT: Mark it in evidence.

11 (Whereupon, People's Exhibit 83, previously
12 marked for identification only, was marked and
13 received in evidence as People's Exhibit 83.)

14 COURT OFFICER: People's 83 received in evidence.

15 MR. BIANCAVILLA: Please hand it to the
16 detective.

17 CONTINUED DIRECT

18 BY MR. BIANCAVILLA:

19 Q Please hold that up for the jury.

20 Detective, could you tell the jury how much
21 substance is contained in a Sweet and Low packet?

22 A One gram.

23 Q In order to obtain one nanogram of a substance,
24 what would we divide that Sweet and Low packet by?

25 A One billion.

People - Det. McCarthy - Direct

1 Q In order to -- so, in other words, with respect to
2 the P30 test --

3 A Yes.

4 Q -- how many nanograms of the antigen would be
5 required --

6 A Four.

7 Q That would be four billionths of a gram?

8 A That's correct.

9 Q With respect to a result on a hematrace card when
10 you are looking for blood, how much would be required for
11 that?

12 A Fifty.

13 Q So that would be 50 billionths of a gram; correct?

14 A That's correct.

15 Q Is it fair to say both of those tests are
16 extremely sensitive?

17 A Yes, they are.

18 Q Detective, I'm going to direct your attention to
19 March 8th of 2000. Did you make another submission to
20 LabCorp?

21 A Yes, I did.

22 Q What did you submit to LabCorp on March 8th?

23 MR. CHAMBERLAIN: Judge, March 8th, 2000 was
24 before the date of the crime, I believe. I think
25 there's a mistake.

People - Det. McCarthy - Direct

1 Q I'm sorry. March 8th of 2001?

2 A 2001, yes. Yes, I resubmitted the standards of
3 Paul Scrimo, John Kane and the deceased, Ruth Williams,
4 along with the remainder of the swab from the beer bottle.

5 Q That was submitted to where?

6 A Again, LabCorp.

7 Q After the testing was done then, were those items
8 returned to you?

9 A Yes, they were.

10 MR. BIANCAVILLA: I would ask the witness be
11 shown what's been marked as People's 81 for
12 identification.

13 THE COURT: Okay.

14 A Yes, this is the items that were in the third
15 mailing.

16 Q Excuse me?

17 A These are the items mailed out in the third
18 mailing.

19 Q Which were what again?

20 A It's the remainder of the swab from the beer
21 bottle. The oral swabs from John Kane. The blood
22 standard of Paul Scrimo and the blood standard from the
23 deceased, Ruth Williams.

24 Q Who directed you to re-submit those items to
25 LabCorp?

People - Det. McCarthy - Direct

1 A This was a request by the then assistant district
2 attorney in this case to get additional testing on the
3 swabbing from the beer bottle.

4 Q Who authorized the use of the remainder of that
5 swab to be sent to LabCorp?

6 A I did.

7 Q Thank you, Detective.

8 MR. BIANCAVILLA: Judge, at this time the People
9 would offer what has been marked for identification as
10 People's Exhibits 80 and 81 in evidence.

11 THE COURT: Please show them to Mr. Chamberlain.

12 MR. CHAMBERLAIN: Short voir dire on 80, your
13 Honor?

14 THE COURT: Yes.

15 VOIR DIRE EXAMINATION

16 BY MR. CHAMBERLAIN:

17 Q The tubes in People's 80, can you see the
18 fingernails in there?

19 A There are no longer any fingernails in there.

20 Q So these are just the tubes?

21 A That's correct.

22 MR. CHAMBERLAIN: I would object based on
23 relevancy of sending tubes -- putting additional
24 evidence before this jury. I don't think they are
25 particularly relevant here.

People - Det. McCarthy - Direct

1 THE COURT: Overruled.

2 MR. CHAMBERLAIN: No other objection.

3 THE COURT: Mark them both in evidence.

4 (Whereupon, People's Exhibits 80 and 81,
5 previously marked for identification only, were
6 marked and received in evidence as People's
7 Exhibits 80 and 81.)

8 COURT OFFICER: People's 80 and 81 received in
9 evidence.

10 MR. BIANCAVILLA: Thank you.

11 I have no further questions of this witness.

12 THE COURT: Mr. Chamberlain, cross-examination.

13 MR. CHAMBERLAIN: Thank you.

14 CROSS-EXAMINATION

15 BY MR. CHAMBERLAIN:

16 Q Detective, you referred to some notes, page two of
17 a report that you filled out. Is that your serology
18 report?

19 A Yes, it is.

20 Q How many pages was that report?

21 A Eight.

22 Q May I see the full eight pages that you are
23 referring to?

24 A Yes.

25 Q These eight pages summarize the entire work you

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1 did in connection with this murder investigation?

2 A Yes, they do.

3 MR. CHAMBERLAIN: I am going to -- withdrawn.

4 Q Detective, are -- is this report a report kept in
5 the regular course of business of the Nassau County Police
6 Department?

7 Is it the regular business --

8 THE COURT: Mr. Chamberlain, you have no answer
9 to the first question yet.

10 Q It was combined. Answer the first question.

11 A Yes.

12 Q Is it the business of the Nassau County Police
13 Department to keep such records?

14 A Yes, it is.

15 Q Were these records made contemporaneously or
16 approximately contemporaneously with the evidence reported
17 herein, the events?

18 A Yes.

19 MR. CHAMBERLAIN: I would offer these.

20 MR. BIANCAVILLA: Objection.

21 THE COURT: You haven't shown any inconsistency,
22 as we have gone over on the record many times before.

23 MR. BIANCAVILLA: Judge, may we do this at the
24 bench?

25 THE COURT: Come forward.

People - Det. McCarthy - Cross

1 (Whereupon, the following took place at the
2 bench outside of the hearing of the defendant and
3 jury.)

4 THE COURT: Mr. Chamberlain, we went through this
5 at length Friday and Thursday, that in order to get a
6 document in evidence, first you must cross-examine the
7 detective as to an alleged inconsistency that may or
8 may not exist and you have to give him an opportunity
9 to acknowledge the inconsistency or not, as the case
10 may be. Then you move it into evidence.

11 MR. CHAMBERLAIN: Judge, it's not a matter of
12 inconsistency. It's a matter of completeness and it's
13 a matter of this jury being able to recall details at
14 the end of a complex case.

15 I think, if there were records kept that
16 explained the evidence collected -- sum total of the
17 evidence collected, it is a fact in this case.

18 THE COURT: We have the detective's testimony.
19 If the jury would like anything read back, they can
20 have that done. They can send us a note, if they have
21 any questions at all.

22 We run by rules of evidence, Mr. Chamberlain,
23 and the rules of evidence are such that this cannot
24 come into evidence. You have not demonstrated the
25 ground work to place this document in evidence.

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1 MR. CHAMBERLAIN: I'll let it go at that.

2 THE COURT: Anything further, Mr. Biancavilla?

3 MR. BIANCAVILLA: No.

4 (Whereupon, the following took place in open
5 court.)

6 CONTINUED CROSS

7 BY MR. CHAMBERLAIN:

8 Q Detective, you also analyzed some swabs obtained
9 from another suspect in this case?

10 A I didn't, no.

11 Q Were they analyzed by serology?

12 A They were obtained by serology.

13 Q And they were not analyzed?

14 A No, they were not.

15 Q Do you have any reason -- do you know of any
16 reason why they were not?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained.

19 Q Can you give us the name of that other suspect?

20 MR. BIANCAVILLA: Objection.

21 THE COURT: Sustained.

22 Q Detective, you indicated that you had some
23 fingernail clippings that you obtained -- that were
24 obtained from the ME; is that correct?

25 A Yes, that's correct.

People - Det. McCarthy - Cross

1 Q Do you know if those fingernail clippings were
2 analyzed by the serology department of the ME's office.

3 MR. BIANCAVILLA: Objection.

4 THE COURT: You are presupposing there is a
5 serology department.

6 Q Is there a toxicological department at the ME's
7 office that does serological work?

8 A I'm not sure.

9 MR. BIANCAVILLA: Objection.

10 THE COURT: If he knows.

11 A I'm not sure, in the time-frame of this case, if
12 the serology section was in operation at the time.

13 Q Do you know whether the fingernails were analyzed
14 by the ME's office, yes or no?

15 A I don't know if they were analyzed or not, no.

16 Q Do you know Doctor Colon at the ME's office?

17 A Yes, she's currently assigned in our laboratory.

18 Q She's what?

19 A She's currently assigned in our laboratory.

20 Q At the time of this incident, was she part of the
21 forensic scientific division of the serology department of
22 the ME's office?

23 MR. BIANCAVILLA: Objection.

24 MR. CHAMBERLAIN: If he knows.

25 MR. BIANCAVILLA: Judge?

People - Det. McCarthy - Cross

1 THE COURT: I'm not sure of the relevancy of
2 that. Sustained.

3 Q Detective, I'm going to show you a serology report
4 and ask you if this refreshes your recollection as to an
5 analysis of the, of serology in the ME's office?

6 MR. BIANCAVILLA: Objection, Judge.

7 THE COURT: If it refreshes his recollection.

8 MR. BIANCAVILLA: I don't believe there was a
9 question on the floor that requires refreshing his
10 recollection.

11 Q Was Doctor Colon at the time a serologist with the
12 ME's office at the time of this incident?

13 A She was over in the ME's office. As to her status
14 at the time, I don't know.

15 Q Does that report reflect her status or refresh
16 your recollection as to that?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained.

19 Q Does it refresh your recollection as to her status
20 at that time?

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Sustained.

23 A Yes.

24 THE COURT: Disregard that, ladies and gentlemen.

25 Q Does that report refresh your recollection as to

People - Det. McCarthy - Cross

1 whether or not the fingernails were examined for blood
2 serology at the ME's office before transferring over to
3 you?

4 A It doesn't reflect in that way. It says -- it
5 says none submitted for examination.

6 Q When you say none, none of what?

7 A It says fingernail clippings. Underneath, it says
8 none submitted for examination. And it says why not next
9 to it with a question mark.

10 Q Detective, in forensic serology, which you are an
11 expert in, wouldn't it be appropriate to examine for blood
12 before transmitting fingernails for DNA analysis?

13 MR. BIANCAVILLA: Objection.

14 THE COURT: I'll permit that.

15 A No.

16 Q You indicated on direct that you saw a light
17 reddish brown stain?

18 A I believe I said brownish.

19 Q Pardon me.

20 A Brownish.

21 Q Brownish. Did that brownish stain indicate to you
22 there was a possible presence of blood?

23 MR. BIANCAVILLA: Objection.

24 THE COURT: I'll sustain it as to form,

25 Mr. Chamberlain.

People - Det. McCarthy - Cross

1 Q Detective, did you make a notation -- you examined
2 those fingernails at that time, before you sent them to
3 LabCorp, under a microscope; is that correct?

4 A That's correct.

5 Q Did you make any notation of that examination?

6 A No, I did not.

7 Q Isn't it appropriate and proper scientific
8 procedure to make a notation of any findings at the time
9 you make them?

10 MR. BIANCAVILLA: Objection.

11 THE COURT: Overruled.

12 MR. BIANCAVILLA: Judge, my same objection from
13 the other day.

14 THE COURT: Overruled.

15 A No. That was the selection process that I was
16 using, visual examination of the items prior to selecting
17 them for further testing.

18 Q When did you first make any reference to that
19 light brown stain?

20 A I didn't because I couldn't determine what it was.
21 There were numerous materials under there, some that I
22 felt might have been nail polish.

23 Q But you are testifying here that that light brown
24 stain was significant; is that correct?

25 A I am just describing why I picked those

People - Det. McCarthy - Cross

1 fingernails to be sent for DNA testing because they had
2 some material under them.

3 Q When did you first make any reference to that
4 light brown stain?

5 A Written reference, I haven't.

6 Q You don't have any?

7 A No.

8 Q When you -- do you recall testifying before the
9 grand jury in this case.

10 You don't?

11 A I am trying to remember.

12 Q If I give you the date of -- I believe it was
13 July 5th, 2000, a few months after the incident, does that
14 refresh your recollection?

15 A I really don't remember testifying at this time.

16 Q Detective, when you swabbed that beer bottle, what
17 did you use, a little Q-tip?

18 A Yes.

19 Q Did it have anything on it?

20 A Distilled water.

21 Q Distilled water.

22 What about LabCorp, do you know what they do when
23 you send fingernails up to them, do they swab them?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: Sustained.

People - Det. McCarthy - Cross

1 Q Do you know what they do in their analysis?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Sustained. It's what they did this
4 time.

5 MR. BIANCAVILLA: Judge, my objection is beyond
6 that.

7 THE COURT: I am sustaining the objection.

8 Q Detective, when you got these fingernail clippings
9 back -- withdrawn.

10 First of all, let me ask you, the fingernail
11 clippings, approximately what size were they?

12 A Some of them had two or three fingernail clippings
13 in it.

14 Q In the tube?

15 A In the tube, but they originated from the same
16 finger.

17 Q And approximately what size were each of them?

18 A I don't have any measurements to assign to them.

19 Q Do you have any recollection as to what they were?

20 A They were small. They weren't large long grown
21 fingernails.

22 Q They were from a person with closely clipped
23 nails?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: Sustained.

People - Det. McCarthy - Cross

1 Q When you say small, what do you mean by that,
2 Detective?

3 A They were typical nail clippings, not, you know,
4 like a real long nail that would have a...

5 Q When you received those fingernails back from
6 LabCorp, they had already been examined by whatever
7 process DNA evaluation took with respect to whether there
8 was any DNA on them; is that correct?

9 MR. BIANCAVILLA: Objection.

10 Q Do you understand the question, Detective?

11 THE COURT: Mr. Chamberlain, I don't understand
12 it.

13 Q Whatever LabCorp does --

14 THE COURT: Mr. Chamberlain, excuse me. If I
15 don't understand the question, I'm sustaining as to
16 form. Therefore, I'm going to ask you to let me
17 finish, then you can ask another question.

18 MR. CHAMBERLAIN: I was about to do that.

19 THE COURT: Okay.

20 Q Would not -- withdrawn.

21 Were you aware of what LabCorp did to these
22 fingernails in their processing of the fingernails to
23 determine where the DNA under the fingernails came from?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: I'll let him answer.

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1 MR. BIANCAVILLA: May we approach?

2 THE COURT: Come forward.

3 Step down, Detective.

4 (Whereupon, the following took place at the
5 bench outside of the hearing of the defendant and
6 jury.)

7 THE COURT: Yes.

8 MR. BIANCAVILLA: Judge, that is the most
9 flagrant and blatant type of hearsay anyone can ask,
10 whether or not someone knows something. He doesn't
11 work for LabCorp, wasn't present when tests were
12 performed, doesn't know which of the cuttings were
13 examined by LabCorp. This clearly calls for a hearsay
14 response and that is inadmissible.

15 THE COURT: Mr. Chamberlain?

16 MR. CHAMBERLAIN: He's an expert in serology.

17 THE COURT: That may be. What does that have to
18 do with it? Is he like a mind reader so he'll know
19 what they did at LabCorp which is hundreds of miles
20 away from Nassau County?

21 MR. CHAMBERLAIN: As an expert, I think I should
22 be able to ask him whether or not it's proper
23 procedure.

24 MR. BIANCAVILLA: Proper procedure or improper
25 procedure is not the subject matter of this trial.

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1 This is not an admissibility hearing. He has no
2 knowledge of LabCorp. He has -- even if he has
3 knowledge, it's obtained through hearsay. Based upon
4 the rules of evidence, hearsay is inadmissible and
5 there is no exception here to that rule.

6 THE COURT: Mr. Chamberlain, asking those
7 questions -- I agree with Mr. Biancavilla this is not
8 proper. When the LabCorp representative gets on the
9 stand, you have the right to ask them as to what he or
10 she did at the time of the tests.

11 What Detective McCarthy did is of no moment
12 because he wasn't there. Anything that was done was
13 in the report or was told by another person over the
14 telephone or some other way.

15 MR. CHAMBERLAIN: Judge, since he's testifying to
16 what he did afterward, I would like to be able to ask
17 the question subject to connection.

18 THE COURT: What?

19 MR. CHAMBERLAIN: I want to ask if LabCorp
20 swabbed those fingernails to do their analysis, would
21 that not -- could that not have removed blood.

22 THE COURT: You can ask hypothetical questions.
23 That's a different story.

24 MR. CHAMBERLAIN: That's where I am going.

25 MR. BIANCAVILLA: My point is how is that

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1 relevant here?

2 MR. CHAMBERLAIN: I think it's relevant.

3 MR. BIANCAVILLA: Excuse me. He's not an expert
4 in DNA analysis. How would he know what the results
5 would be?

6 THE COURT: Mr. Chamberlain, I'm not sure what
7 you want to ask this man who is an expert in serology.

8 MR. CHAMBERLAIN: He's putting this man in as
9 proof. He's presenting him to prove that R3, the
10 fingernails with scrapings of John Kane, did not
11 contain blood. That's a finding he's presenting for
12 some reason.

13 MR. BIANCAVILLA: Exactly.

14 MR. CHAMBERLAIN: So I have a right to ask this
15 witness who is an expert witness whether or not
16 swabbing would remove blood --

17 THE COURT: Which swabbing, his swab?

18 MR. CHAMBERLAIN: No.

19 THE COURT: Which swabbing are you talking about,
20 Mr. Chamberlain?

21 MR. CHAMBERLAIN: I'm sure during the DNA
22 analysis they swabbed those fingernails.

23 THE COURT: So ask the DNA person from LabCorp
24 those questions.

25 MR. CHAMBERLAIN: I will. I am asking that I be

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1 allowed to ask this witness a hypothetical based upon
2 that set of facts subject to connection.

3 MR. BIANCAVILLA: It's my position, Judge,
4 that's clearly -- what was done to those fingernails
5 once they are beyond the Nassau County Police
6 Department laboratory is subject matter for the DNA
7 person.

8 THE COURT: Mr. Chamberlain, before you can ask
9 questions of this witness, you have to qualify him as
10 an expert in that field. He may not be able to answer
11 your questions.

12 MR. CHAMBERLAIN: I'm asking serology, Judge.

13 THE COURT: He may be an expert in A but not
14 necessarily B.

15 MR. CHAMBERLAIN: I agree. What I am asking is,
16 really, is serology based upon what LabCorp may have
17 done. I'm asking you take it subject to connection.
18 He's being presented as an expert in serology.

19 THE COURT: I will permit you to ask questions of
20 the witness if you can qualify him -- that he would
21 know what happens to the swabs.

22 MR. BIANCAVILLA: First, we are assuming it was
23 swabbed. There's no evidence that LabCorp swabbed
24 anything, Judge.

25 THE COURT: That may be.

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1 Now, first, if you can ask him the question and
2 you can qualify that he would know that, I will
3 permit you to ask the question, however, if he
4 doesn't know that, it would be like asking him
5 something he has no expertise on.

6 MR. CHAMBERLAIN: I'm going to ask him a
7 hypothetical, assuming, as your Honor suggested --

8 THE COURT: I told you that you would have to ask
9 him if he would know something. He has to be
10 qualified as someone who knows. Then you can ask your
11 hypothetical question.

12 MR. CHAMBERLAIN: All right.

13 (Whereupon, the following took place in open
14 court.)

15 CONTINUED CROSS

16 BY MR. CHAMBERLAIN:

17 Q Detective, you are an expert in serology; is that
18 correct?

19 A Yes.

20 Q And that's the analysis of blood, bodily fluids
21 and blood; is that correct?

22 A That's correct.

23 Q Would swabbing of a sample prior to your
24 examination of that sample possibly affect what was on it?

25 A Yes.

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1 THE COURT: We're talking about the blood,
2 Mr. Chamberlain.

3 Q With respect to analysis of blood?

4 A Yes, it would lower the sample size.

5 Q So that swabbing and swabbing with distilled water
6 or alcohol would affect it; is that right?

7 A Yes.

8 MR. BIANCAVILLA: Objection. Where did alcohol
9 come from?

10 MR. CHAMBERLAIN: I asked about it,
11 Mr. Biancavilla.

12 THE COURT: Excuse me. Excuse me. We have an
13 objection on the floor.

14 MR. CHAMBERLAIN: I object to --

15 THE COURT: I don't want to hear colloquy.

16 Sustained as to form. You are assuming something not
17 in evidence, Mr. Chamberlain.

18 Q So it's possible, Detective, that swabbing,
19 regardless of whatever was on the swab, would remove some
20 of the material that you would be testing for serology
21 substances; is that correct?

22 A Yes, if you remove some material from it, that's
23 less material that would remain to work with.

24 Q So, for you to tell us -- withdrawn.

25 Now, I am going to ask you, assuming this

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1 hypothetical, assuming that after you sent these
2 fingernails to LabCorp in North Carolina for testing,
3 assuming that they were swabbed in connection with that
4 process for DNA testing, before they were returned to you,
5 would that possibly have effected the results that you
6 testified to as to, first, two and five, with respect to
7 seminal fluid?

8 A It would depend on if all the potential material
9 was removed by that swabbing.

10 Q You have no way of knowing whether it was or not?

11 A I spoke with the analyst at the time.

12 Q You spoke with the analyst at the time?

13 A Yes, that's correct.

14 Q You have no way of personally knowing what was
15 removed or not; is that correct?

16 A Personally I don't, no.

17 Q Did you make any report anywhere of that
18 conversation you had with the analyst at that time?

19 A No, I don't, but LabCorp does.

20 Q Where you can, answer my questions with a yes or
21 no, Detective.

22 MR. BIANCAVILLA: Judge, he answered the
23 question he was asked.

24 THE COURT: Mr. Chamberlain has the right to
25 phrase his cross-examination as he sees fit.

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1 Q Detective, with respect to R3, the fingernail
2 known as R3, would a prior swabbing have possibly removed
3 the blood that you were looking for?

4 A Again, if you remove all the material, then you
5 can test it. If you remove part of the material, you can
6 test what is remaining. It depends on what material is
7 removed.

8 Q As you sit here, you have no way of knowing how
9 much material was removed; is that right?

10 A Just from phone conversations.

11 Q I said you have no way of knowing, other than what
12 you may or may not have been told; is that right?

13 MR. BIANCAVILLA: Objection.

14 THE COURT: Sustained.

15 He just answered that, Mr. Chamberlain.

16 Q Now, Detective, couldn't you have tested these
17 fingernails before you sent them for serology -- before
18 you sent them to DNA?

19 A I made a decision to send them for DNA first
20 because of the small amount of material present. I would
21 prefer to find out whose DNA it was before I do testing as
22 to the source of the DNA; otherwise, I could have done a
23 test on human blood or seminal fluid and would have said
24 human blood or seminal fluid not knowing whose it was. So
25 I made that choice as a serologist.

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1 Q Before you found out, for whatever reason, no
2 serology tests for blood were made by the medical
3 examiner; is that correct?

4 MR. BIANCAVILLA: Objection.

5 THE COURT: Sustained.

6 Q You were concerned about the possibility of your
7 swabbing removing material that would effect the DNA test,
8 is that your testimony?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: I'll permit that.

11 MR. BIANCAVILLA: Swabbing of what, Judge? He
12 sent down several items.

13 MR. CHAMBERLAIN: I would object to this
14 commentary.

15 THE COURT: I don't want colloquy between
16 counsel.

17 Mr. Chamberlain, I suggest you make it more
18 specific which swabbing you are referring to.

19 Q You indicated you made a decision not to test for
20 serology before you sent these fingernail to LabCorp, is
21 that correct, yes or no?

22 A I didn't do any basic serology testing on it prior
23 to going to LabCorp.

24 Q And that was your decision?

25 A That's correct.

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1 Q And the reason for that decision was that you were
2 concerned about removing material; is that correct?

3 A Using material, yes.

4 Q Using material. Using material under the
5 fingernails, is that correct, that's the material we are
6 talking about?

7 A That's correct.

8 Q How would you use that material?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained.

11 Q Physically, what would cause that material to be
12 used in your process?

13 MR. BIANCAVILLA: Objection.

14 THE COURT: Sustained as to form,

15 Mr. Chamberlain.

16 Q How would you perform a serology test before
17 sending these fingernails to LabCorp?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: There was no test. Sustained.

20 Q Would you have performed the same tests before
21 that you performed afterwards?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: I'm not sure what you mean.

24 Sustained.

25 MR. CHAMBERLAIN: Judge, he performed tests

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1 afterwards.

2 THE COURT: Mr. Chamberlain, if I don't
3 understand a question, I will tell you and I will
4 sustain as to form. I'm not saying it can't be asked
5 but it has to be in proper form.

6 MR. CHAMBERLAIN: Thank you, Judge.

7 Q Detective, you performed certain tests you
8 testified to here on these fingernails after they came
9 back from LabCorp; is that correct?

10 A Yes.

11 Q And you performed different tests on R2 and R5
12 from the one you performed on R3; is that right?

13 A That's correct.

14 Q Would you have performed the same tests that you
15 performed on those fingernails before you sent them to
16 LabCorp to determine serology?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Do you understand the question,
19 Detective? If you don't, tell me.

20 THE WITNESS: Not exactly. I understand where he
21 is going but --

22 THE COURT: I want you to completely understand
23 the question. If you don't, just tell me.

24 A The way I did the tests after I received them, I
25 wouldn't have done it the same exact way prior to. I

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1 would have had to try to modify it and remove a small
2 percentage of the sample and try to retain some sample for
3 DNA testing. But I preferred to find out if there was DNA
4 there, whose it was, prior to identifying what it was.

5 Q Now, Detective, if you had fingernail scrapings
6 from three different fingernails that were sent to
7 LabCorp --

8 MR. BIANCAVILLA: Objection.

9 MR. CHAMBERLAIN: It's preliminary. I'm not
10 finished.

11 MR. BIANCAVILLA: Judge, they were cuttings.

12 THE COURT: Sustained. You have to use what he
13 did. They were cuttings.

14 Q Before you performed the test after the
15 fingernails were sent back from LabCorp, were you aware of
16 LabCorp's findings with respect to these fingernails?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: I'll permit that.

19 A Yes, I was.

20 Q And you were aware that Paul Scrimo had been
21 arrested for the murder; is that right?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: Sustained.

24 Q You say you were aware of the findings. You were
25 aware that there was a difference in their findings with

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1 respect to fingernails R2 and R5 as contrasted with their
2 findings as to R3; is that correct?

3 MR. BIANCAVILLA: Objection.

4 THE COURT: Sustained. You are introducing
5 hearsay, Mr. Chamberlain.

6 Q Detective, there was -- you were aware that
7 John Kane had been identified, his DNA had been identified
8 only under R3; is that correct?

9 MR. BIANCAVILLA: Objection. You know what,
10 I'll withdraw the objection, Judge.

11 THE COURT: You can answer, Detective.

12 A May I refer to my notes.

13 THE COURT: Yes, you can refresh your
14 recollection.

15 THE WITNESS: May I have my report back?

16 THE COURT: Yes, Mr. Chamberlain, the detective's
17 report.

18 MR. CHAMBERLAIN: Oh, I'm sorry.

19 THE WITNESS: Could you repeat the question?

20 Q Could you read the question back?

21 THE COURT: Read it back.

22 (Whereupon, the requested question was read
23 back by the court reporter.)

24 A Only under R3, as referring to the fingernail
25 clippings?

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1 Q R3 being the fingernail, R3?

2 A Yes.

3 Q You indicated R3 was the one you tested for human
4 blood?

5 A That's correct.

6 Q An that was the only one you tested for human
7 blood?

8 A That's correct.

9 Q Now, who asked you to make that additional test
10 which had not been made previously?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Sustained. That's not relevant.

13 Q DNA, Detective, is present in the nuclei of cells,
14 is it not?

15 MR. BIANCAVILLA: Objection.

16 THE COURT: Sustained.

17 MR. CHAMBERLAIN: He's testifying as an expert in
18 serology.

19 THE COURT: This is DNA, Mr. Chamberlain. You
20 have to qualify him as such.

21 Q Does your expertise include the study of DNA in
22 human cells, Detective?

23 A No. Currently we are contracting our DNA work out
24 to LabCorp.

25 Q But you have no training or expertise in that

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1 field?

2 A I have some. I can answer basic questions, but if
3 it gets into the actual testing --

4 Q Is it basic that DNA is only contained in the
5 nuclei of the cell?

6 MR. BIANCAVILLA: Objection.

7 THE COURT: You can testify to that.

8 Q What is the answer to that question?

9 A Yes.

10 MR. BIANCAVILLA: Objection. I'll ask to
11 approach.

12 THE COURT: Come forward.

13 MR. CHAMBERLAIN: I'll withdraw the question.

14 MR. BIANCAVILLA: I would ask the answer be
15 stricken.

16 THE COURT: Ladies and gentlemen, the last
17 response by the detective, as well as the question by
18 Mr. Chamberlain, is stricken and you should disregard
19 it.

20 Q Does your expertise in the analysis of DNA include
21 information as to whether DNA is contained in cells other
22 than blood cells?

23 MR. BIANCAVILLA: Objection.

24 THE COURT: Mr. Chamberlain, he just said he
25 could only give basic information. Sustained.

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1 Q Can you tell what type of cells DNA is contained
2 in?

3 MR. BIANCAVILLA: Objection.

4 THE COURT: Counsel, come up, please. Approach
5 the bench.

6 Detective, step down.

7 (Whereupon, the following took place at the
8 bench outside of the hearing of the defendant and
9 jury.)

10 THE COURT: Mr. Chamberlain, these questions you
11 are asking are best for a LabCorp representative. He
12 told you he's not an expert in DNA and you're asking
13 DNA questions which I will keep sustaining. He says
14 he can only give you basic information.

15 MR. BIANCAVILLA: Basic information is not the
16 subject matter of testimony in a trial unless the
17 person is qualified as an expert.

18 THE COURT: He hasn't been qualified as an expert
19 with respect to DNA.

20 MR. CHAMBERLAIN: If I may be heard, I think I'm
21 entitled to ask these questions. This information is
22 put forth by the district attorney that there's no --
23 he tested for blood after these items were returned,
24 after R3, the fingernail with John Kane's DNA was
25 returned.

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1 The significance of that, I think he has
2 sufficient knowledge and I would like to know the
3 significance of that. Part of the significance will
4 depend -- the reason for that is to try to undercut
5 the DNA findings and I think he can testify that the
6 impression being left with this jury that there's no
7 blood there is not a proper impression.

8 I think I can get that from this witness. If I
9 can't, I can't, but I should be able to ask him.
10 He's an expert based upon his qualification in
11 serology which includes blood. It includes the
12 significance of no blood being in that DNA.

13 THE COURT: DNA is a specialty much more specific
14 than serology, Mr. Chamberlain. I am not going to
15 permit you to ask him questions where he has not been
16 qualified as an expert. He answered that he could
17 answer limited questions with respect to DNA.

18 He has been qualified as an expert with respect
19 to serology, not DNA. You can ask any question you
20 want about serology and blood.

21 It's your job, when the LabCorp representative
22 is here, you can ask any DNA questions you want and
23 tie it together however you want in your summation,
24 but I'm not going to permit you to question someone
25 who is not an expert.

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1 MR. BIANCAVILLA: Can we move on? I have a
2 witness with a two o'clock flight. We are going to
3 spend more time at the bench -- this was a 15 minute
4 witness.

5 MR. CHAMBERLAIN: Who is your next witness?

6 MR. BIANCAVILLA: May we move on?

7 THE COURT: Yes. Your objection is sustained.

8 MR. BIANCAVILLA: Thank you.

9 (Whereupon, the following took place in open
10 court.)

11 THE COURT: Mr. Chamberlain.

12 CONTINUED CROSS

13 BY MR. CHAMBERLAIN:

14 Q Detective, you indicated that your tests,
15 subsequent to the return of those fingernails on
16 fingernail scrapings from R3 --

17 MR. BIANCAVILLA: Objection. It wasn't a
18 scraping, Judge.

19 THE COURT: It was a cutting.

20 Q On fingernail R3, the material on fingernail R3,
21 indicated that it did not contain hemoglobin, is that your
22 testimony here?

23 A Yes, human hemoglobin.

24 Q What is the significance of that here?

25 MR. BIANCAVILLA: Objection.

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1 THE COURT: Sustained as to significance.

2 Q Detective, you indicated that you would -- in the
3 year 2001, on March 8th, you resubmitted material to
4 LabCorp for re-examination that included John Kane's DNA,
5 swabs, Paul Scrimo's DNA sample, the beer bottle, and the
6 DNA taken from the victim; is that correct?

7 A That's correct.

8 Q Who asked you to resubmit that?

9 A That request was made through the assistant
10 district attorney.

11 Q Did he indicate why that was being resubmitted for
12 re-evaluation?

13 MR. BIANCAVILLA: Objection.

14 THE COURT: Sustained.

15 Q Were you aware of that DNA -- the DNA report prior
16 to that with respect to that beer bottle?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: I will permit him to answer that.

19 A Yes, I believe I was.

20 Q The resubmission was to do what? Do you know why
21 you were resubmitting?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: Sustained.

24 Q After -- withdrawn.

25 Was there a change in the DNA analysis after that

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1 resubmission?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Sustained as to form.

4 Q You indicated that you authorized the using up of
5 the DNA sample on that swab, is that correct, on that
6 resubmission?

7 MR. BIANCAVILLA: Objection. There were several
8 swabs.

9 THE COURT: Which one, Mr. Chamberlain?

10 Q I'm talking about the swab from the bottle.

11 A I authorized them to use additional material that
12 they found necessary to do the second typing that we
13 requested.

14 Q When you say additional material, you authorized
15 them to use all the DNA so that it could not be tested by
16 the defense?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained.

19 Q Did you authorize the using -- when you said
20 additional material, was all that material used up?

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Sustained.

23 Q What do you mean by the word additional material?

24 MR. BIANCAVILLA: Objection?

25 THE COURT: Sustained, Mr. Chamberlain.

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1 Come forward, please, counsel.

2 (Whereupon, the following took place at the
3 bench outside of the hearing of the defendant and
4 jury.)

5 THE COURT: You are asking the wrong person the
6 questions about what they did at LabCorp. That's the
7 person you would have these questions for as to
8 whether they used all the materials or was there
9 anything left. He just authorized the use.

10 MR. CHAMBERLAIN: That's not correct. What is
11 correct here is, number one, that it was brought out
12 on direct that he authorized the using of the
13 material. That means all of the material.

14 MR. BIANCAVILLA: That's not what he said.

15 THE COURT: On direct he indicated he authorized
16 it to be sent back for a second typing.

17 MR. CHAMBERLAIN: I heard using up, Judge, and
18 there's a history here.

19 MR. BIANCAVILLA: There's always a history.

20 THE COURT: Let me hear Mr. Chamberlain.

21 MR. CHAMBERLAIN: We had motion practice on this
22 at length.

23 MR. BIANCAVILLA: Judge, I have to interrupt.
24 This is merely another stall tactic.

25 MR. CHAMBERLAIN: Please, stop.

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1 THE COURT: The way we are going, I don't think
2 they'll make it.

3 MR. BIANCAVILLA: We spend more time at this
4 bench than asking questions. You have the right to
5 say sustained and let's move on.

6 THE COURT: What I'm trying to do is explain to
7 Mr. Chamberlain that I don't want this area --

8 MR. BIANCAVILLA: Just say sustained, Judge.

9 THE COURT: Make your record and move on,
10 because, as far as I'm concerned, with the motion
11 practice that's fine. It's been done. There's a
12 decision of this court, a county court judge, who made
13 a decision with respect to these issues you are
14 telling me about in motion practice. I'm not
15 interested in that. I am interested in questions.

16 MR. CHAMBERLAIN: I understand, but the point is,
17 in that motion, the issue was brought out regarding
18 who authorized the using up of the entire sample. I
19 am entitled, I believe.

20 THE COURT: Why don't you ask the person --

21 MR. CHAMBERLAIN: He's testified he authorized
22 it.

23 THE COURT: The person from LabCorp, ask him or
24 her as to whether the substance was completely used up
25 with the second typing.

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1 MR. CHAMBERLAIN: It was. I know that.

2 THE COURT: Then ask that person, not this
3 person. Sustained.

4 MR. CHAMBERLAIN: It's a question of who
5 authorized it.

6 THE COURT: You have it on the record. He
7 authorized the sending out of a second typing. You
8 can ask the question of the proper person who is the
9 person from LabCorp, not this person.

10 MR. CHAMBERLAIN: Judge, this person
11 authorized -- LabCorp doesn't authorize using up the
12 entire sample.

13 THE COURT: You are talking about apples and
14 oranges. Detective McCarthy indicated he authorized a
15 second typing. You ask the person from LabCorp how
16 much of the material was used.

17 MR. BIANCAVILLA: One other thing, Judge. I
18 understand you are breaking early. I would ask we
19 take a short break and that we continue on to 12:30 in
20 order to complete these witnesses. There's no reason
21 to break early.

22 MR. CHAMBERLAIN: Who is the next witness?

23 MR. BIANCAVILLA: Meghan Clement.

24 I think we should work to 12:30. The earlier
25 she gets done --

People - Det. McCarthy - Redirect

1 MR. CHAMBERLAIN: You know he can't expect to
2 bring a witness in --

3 THE COURT: I don't want to get involved in that.
4 I am doing the best I can with respect to scheduling.

5 MR. CHAMBERLAIN: I will finish up here, Judge.

6 (Whereupon, the following took place in open
7 court.)

8 MR. CHAMBERLAIN: Nothing further.

9 THE COURT: Redirect, Mr. Biancavilla?

10 MR. BIANCAVILLA: Briefly.

11 REDIRECT EXAMINATION

12 BY MR. BIANCAVILLA:

13 Q Detective, McCarthy, will you, please, review your
14 notes in this particular case regarding any indications
15 you made of the examination of the fingernails
16 scrapings -- cuttings?

17 A Yes.

18 Q Did you make notes regarding the examination of
19 the fingernail clippings and submitting those fingernail
20 cuttings to LabCorp?

21 A Yes, I did.

22 Q Detective McCarthy, when you received those items
23 back, I believe you testified that there were a number of
24 clippings from the fingernails that were sent to LabCorp;
25 correct?

People - Det. McCarthy - Redirect

1 A Yes.

2 Q Do you know how many clippings were sent regarding
3 each fingernail?

4 A No. I believe R3 had three. And R2 and R5, one
5 of them had two but I'm not sure which.

6 Q So do you know for a fact that when you got those
7 fingernail clippings back that you analyzed the clipping
8 that was used for the DNA analysis or clippings that had
9 been not been used for the DNA analysis?

10 MR. CHAMBERLAIN: Objection. I don't understand.

11 THE COURT: Do you understand the question,
12 Detective?

13 THE WITNESS: Yes, I do.

14 A I analyzed clippings that had been used for the
15 DNA analysis.

16 Q But with respect to how many clippings were used
17 for the DNA analysis, do you know how many of the
18 clippings were used for DNA analysis?

19 A I thought it was a percentage of each.

20 Q But not the entire clipping?

21 A That's correct.

22 MR. BIANCAVILLA: Thank you. Nothing further.

23 THE COURT: Mr. Chamberlain.

24

25

People - Det. McCarthy - Recross

1 RECROSS EXAMINATION

2 BY MR. CHAMBERLAIN:

3 Q Were they examining the clippings or materials on
4 the clippings?

5 MR. BIANCAVILLA: Objection.

6 THE COURT: I'll permit that.

7 MR. BIANCAVILLA: How would he know what LabCorp
8 was examining?

9 THE COURT: Technically, that's true. I'll
10 sustain that. All right.

11 Q Detective, didn't you just testify that they only
12 used up a portion of the clippings?

13 A That's correct.

14 Q How did you know that?

15 MR. BIANCAVILLA: Objection.

16 THE COURT: You just asked two questions,
17 Mr. Chamberlain.

18 Q You just testified for Mr. Biancavilla they used
19 up only a portion of the clippings. How did you know
20 that?

21 A With phone conversations.

22 Q And when you say to Mr. Biancavilla a portion of
23 the clippings, are you talking about the clippings or the
24 material that was on the clippings?

25 MR. BIANCAVILLA: Objection.

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1 THE COURT: Sustained.

2 Q When you said the clippings to Mr. Biancavilla, in
3 answer to that question, what were you referring to,
4 Detective?

5 A I was referring to the material under the
6 clippings.

7 Q Thank you.

8 And is it not a fact, from your phone
9 conversations, you realized they had done DNA analysis on
10 the material on all those fingernail clippings?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Sustained as to form. Just to form,
13 Mr. Chamberlain.

14 Q You were certainly aware that the material under
15 the fingernails -- the three pieces designated as R3,
16 fingernail R3, had they found John Kane's DNA; right?

17 MR. BIANCAVILLA: Objection. Beyond the scope
18 of redirect, Judge.

19 MR. CHAMBERLAIN: It's the only material thing
20 here.

21 MR. BIANCAVILLA: Beyond the scope.

22 THE COURT: It's beyond the scope but I will let
23 him answer. Let's not get into colloquy.

24 Could you repeat that again?

25 Q You are aware that they found John Kane's DNA